

FST-CV226057408S : SUPERIOR COURT  
RALPH S. GIORGIO : JUDICIAL DISTRICT  
OF STAMFORD/NORWALK  
v. : AT STAMFORD, CONNECTICUT  
PAUL SCHWARTZ, ET AL : JULY 10, 2023

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE KENNETH B. POVODATOR

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY GREGORY D. ABT  
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Self-Represented Defendant:

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1 THE COURT: First matter I have down is Giorgio  
2 v. Schwartz.

3 ATTY. ABT: Good morning, Your Honor. Gregory  
4 Abt for the plaintiff who is present.

5 THE COURT: Anyone here for the defendant?

6 ATTY. SIEGEL: Yes, good morning, Your Honor.  
7 Joshua Siegel, Kasowitz Benson Torres, LLP, for  
8 defendants.

9 THE COURT: All right. Thank you.

10 [OTHER MATTERS DISCUSSED]

11 THE COURT: So okay. The first matter I think  
12 we take then is Giorgio v. Schwartz, CV-226057408,  
13 counsel please identify yourselves.

14 ATTY. ABT: Good morning, Your Honor. Gregory  
15 Abt appearing for Mr. Giorgio, the plaintiff.

16 ATTY. SIEGEL: Good morning, Your Honor. Joshua  
17 Siegel appearing on behalf of defendants and in  
18 support of the motion to dismiss.

19 THE COURT: All right. I mean, we can cut to  
20 the chase, I guess. The plaintiff does not appear to  
21 challenge the defendant's contention that you have  
22 not complied with the various statutes in the fifty-  
23 two, dash, forty-six, forty-seven, forty-eight range  
24 that talk about when the process needs to be served,  
25 when it has to be returned to court, the interval  
26 between the dating of the process and the return  
27 date, that essentially none of those have been

1           complied with.

2           Is there anything I am missing in terms of your  
3           submission, because your submission does seem to be  
4           silent about that. And among other things, that is  
5           one of the points identified by the defendant in  
6           their reply.

7           ATTY. ABT: Your Honor, only that any defect in  
8           the service, the return of service, the timing of  
9           same, have all been waived by defendants when they  
10          filed a general appearance. If you recall, Your  
11          Honor, back in April, counsel for the defendants --

12          THE COURT: Woah, hold it. Hold it. The  
13          appearance is dated April 21, correct?

14          ATTY. ABT: Yes, Your Honor.

15          THE COURT: Motion was filed May 19<sup>th</sup>. How is  
16          that a waiver?

17          ATTY. ABT: I'm sorry, Your Honor. I must have  
18          misread the date as far as the thirty days after they  
19          appeared.

20          ATTY. SIEGEL: The motion was timely filed, Your  
21          Honor.

22          THE COURT: Okay. Okay, counsel, I'm dealing  
23          with the plaintiff's counsel because I'm trying to  
24          find out whether there is any contention that there  
25          is anything resembling compliance with -- let me just  
26          (indiscernible) my notes -- 52-46, 52-46(A), 52-48,  
27          and I know that defense counsel cited it, it's a case

1           that I'm well aware of, the *Prenderville v. Sinclair*  
2           case, 164 Conn. App. 439.

3           It's one of those cases that say there must be  
4           compliance with all of those statutes, and I am well  
5           aware of the fact that a lot of stuff can be amended,  
6           but no matter what you do, you need to be able to  
7           comply with all three, even by way of amendment. And  
8           A, you haven't sought to amend, and B, I don't know  
9           that you -- it doesn't seem that it's even possible  
10          to do so since you returned the process, what, six,  
11          eight months prior to service. I mean, which is the  
12          convoluted way to deal with, you know, Connecticut  
13          practice, I'm not sure if you're familiar.

14          Connecticut practice, Connecticut law, is an  
15          action is commenced by service not by filing. So I'm  
16          not sure if there's any way you believe that this is  
17          not, on multiple levels, defective.

18          ATTY. ABT: Right now, Your Honor, I can't cure  
19          what ABC Legal did or did not do as far as  
20          effectuating service. The contention that I was  
21          making is that a general appearance did not need to  
22          be filed in order to file the motion to dismiss.

23          THE COURT: Excuse me, what do you mean? You  
24          can't file a motion to dismiss unless you have an  
25          appearance.

26          ATTY. ABT: A general appearance did not need to  
27          be made.

1           THE COURT: What kind of appearance could be  
2           made other than a general appearance? Connecticut  
3           abolished special -- there used to be -- there is a  
4           recent concept of a limited appearance, which does  
5           not apply to this situation. A -- there used to be a  
6           special appearance back in pre-current Practice Book  
7           days, I believe it was back in the late 70's that  
8           that concept was abolished when the new rules were in  
9           enacted in, I believe it was 1978.

10          They did away with the concept of a limited -- a  
11          special -- I think it was called a special appearance  
12          -- which allowed one to appear to contest  
13          jurisdiction. Connecticut has only a general  
14          appearance subject to a recent addition of the  
15          concept of limited appearance, which is extremely  
16          constrained. I don't know what appearance counsel  
17          could have filed other than a general appearance.

18          ATTY. ABT: Your Honor, the appearance that was  
19          filed back in April was done so that it could cure,  
20          by counsel's part, an attempted ex parte  
21          communication with the Court. That's why a general  
22          appearance was filed then.

23          THE COURT: No, the question is -- see I don't  
24          understand what other kind of appearance could have  
25          been filed other than a general appearance in order  
26          to file the motion to dismiss.

27          ATTY. ABT: Your Honor, the general appearance

1           could have been filed in conjunction with the motion  
2           to dismiss.

3           THE COURT:  It -- I don't understand.  What are  
4           you saying should have been done?  Give me an example  
5           of the process that you think should have been  
6           followed for counsel to perfect his challenge to the  
7           process, and acquisition of personal jurisdiction  
8           over his clients.

9           ATTY. ABT:  Your Honor, my point is that counsel  
10          attempted to have an ex parte communication with the  
11          Court to have this matter dismissed informally.

12          THE COURT:  And I said he can't do that.

13          ATTY. ABT:  Right.

14          THE COURT:  Correct?

15          ATTY. ABT:  Yes, Your Honor.

16          THE COURT:  So he did what he had to do.  I  
17          don't understand what kind of appearance you think he  
18          should have filed.

19          ATTY. ABT:  Okay.

20          THE COURT:  I mean -- all right.  Defense  
21          counsel, is there anything you want to say or add?

22          ATTY. SIEGEL:  No, Judge.  I'll rely on our  
23          papers.  We need a dismissal of this case.

24                 The point -- I'll only say this.  Nothing that  
25          counsel just mentioned about appearance is mentioned  
26          in his opposition, so I'll note that.  As well as the  
27          fact that our motion was clearly made within thirty

1 days of our appearance, so it's timely. And last I'd  
2 add, the attempt by counsel to blame his process  
3 server for these obvious defects, that's -- there's  
4 nothing in his objection other than his own  
5 statements, so I don't see any way for the Court to  
6 rule on that.

7 Once we have a dismissal here, counsel will do  
8 whatever he thinks he can, or thinks is appropriate,  
9 as far as whether he wants to file a new action, or  
10 take other steps. That's not on for today.

11 What's on for today is the fact that this case,  
12 there's no jurisdiction, amendment is not possible,  
13 there is no cure here, and we should get an order of  
14 dismissal. Thank you.

15 THE COURT: All right. I know that counsel for  
16 the plaintiff is, at least in part in his submission,  
17 saying there was something wrong with the process  
18 server, what the process server did, but that may be  
19 pertains to issues I am not addressing because there  
20 are some issues that might require an evidentiary  
21 proceeding. You just heard me talk about another  
22 case that will require an evidentiary hearing because  
23 of conflicting stories as to who was served, whether  
24 it was proper service, and so forth, and so on.

25 So for example, there's a question of whether  
26 somebody was served at their home or served at a  
27 business. Those are issues that might require

1 evidence, but the basic problem is that this case was  
2 commenced -- I shouldn't say commenced -- was filed  
3 six, eight months prior to the actual service of  
4 process, which means that the return date -- what was  
5 the return date? I have a note here -- the return  
6 date is 8-9-22. There apparently was no attempt at  
7 service until February, March, April, of 2023.

8 So I'm not sure how the process server is --  
9 unless the process server got the papers back in  
10 August of 2022, or July of '22, and held onto them  
11 for six, or eight, nine months before trying to serve  
12 the parties, I don't know how the service  
13 organization has any responsibility for that. Again,  
14 it may be -- maybe they did hold onto it, but that's  
15 not something we're dealing with.

16 We're dealing with simply a failure to comply  
17 with 52-46, 52-46(A), 52-48, and as I said, I am well  
18 aware of the Prenderville v. Sinclair kind of  
19 approach because quite frankly, when I was in  
20 practice I know that on at least one occasion I made  
21 that same kind of argument. That there was a case  
22 where somebody had dates that were so bad that there  
23 was no way to salvage it because you couldn't  
24 simultaneously comply with all of those statutes.

25 Prenderville simply indicates that that is  
26 clearly the law in the State of Connecticut. So for  
27 all these reasons, the motion to dismiss is granted.

1           ATTY. SIEGEL: Thank you, Your Honor.

2           ATTY. ABT: Thank Your Honor.

3           ATTY. SIEGEL: A written order will be issued?

4           THE COURT: Who's asking for a written order?

5           ATTY. SIEGEL: For defendants, a written order  
6 will be issued, judge?

7           THE COURT: Well, what I just recited was  
8 intended to be in lieu of a written order. Is there  
9 anything more detailed that's required than what I  
10 just said?

11          ATTY. SIEGEL: I can contact your clerk for a  
12 transcript. A written order would be great --

13          THE COURT: No, not the clerk. It's not the  
14 clerk. You have to contact the Monitor. Monitors  
15 will generate a transcript. If you want a transcript  
16 signed by me that you can order the transcript and  
17 have it submitted to me for signature.

18          ATTY. SIEGEL: All right, Your Honor. And to  
19 contact the Monitor, contact your clerk for the  
20 Monitor's information or is the Monitor present today  
21 that I can get the information.

22          THE MONITOR: The monitor is present. Counsel  
23 has to order through our eServices on the judicial  
24 branch website. So there's a left side panel that  
25 will get you there.

26          ATTY. SIEGEL: Understood. Thank you, very  
27 much. Thank you, Your Honor.

1           THE COURT: All right. And the reason that I'm  
2           not doing a written decision or order is because I'm  
3           trying to expedite the process. Otherwise, if I say  
4           I'm going to write a decision on this, maybe I'll get  
5           to it today. If I don't get to it today I don't know  
6           when I'll get to it, and I wanted just to have this  
7           done because I think there is -- the analysis that I  
8           provided is more than adequate for justifying why the  
9           motion's being granted in all respects.

10           ATTY. SIEGEL: Thank you, Your Honor.  
11           Understood.

12           ATTY. ABT: Thank Your Honor.

13           \*\*\*\*\*  
14

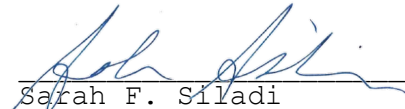
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Kenneth Povodator, JTR  
(signed July 27, 2023)

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C E R T I F I C A T I O N

I hereby certify the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 10<sup>th</sup> day of July, 2023.

Dated this 14<sup>th</sup> day of July, 2023, in Stamford, Connecticut.

  
\_\_\_\_\_  
Sarah F. Siladi  
Court Recording Monitor