

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO: 11-21064-JLK**

VIDHYA BALACHANDER as personal  
Representative of the estate  
of SRIPATHI BALACHANDER, deceased,

Plaintiff,

v.

NCL (Bahamas) LTD. d/b/a NCL, XYZ  
CORPORATION, and REY PONTERAS,

Defendant.

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**ORDER DENYING MOTION TO QUASH  
SERVICE OF PROCESS AND TO DISMISS**

**THIS MATTER** is before the Court upon Defendant Rey Ponteras's Corrected Limited Appearance Motion to Quash Service of Process and to Dismiss (DE #14), filed April 27, 2011. The Court is fully briefed in the matter.<sup>1</sup>

This is a personal injury case. Plaintiff seeks to recover on behalf of her deceased husband, who allegedly died as a result of injuries he sustained while on a cruise operated by Defendant NCL (Bahamas) Ltd. (DE #1). Defendant Ponteras is a doctor employed by

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<sup>1</sup>Plaintiff filed a Response in Opposition (DE #21) May 26, 2011, and Defendant Ponteras replied (DE #23) June 1, 2011.

Defendant NCL. *Id.* He treated the decedent before his death. *Id.* Dr. Ponteras is a resident of the Phillipines.

In the instant Motion, Defendant Ponteras seeks to quash service of process and dismiss the case for lack of personal jurisdiction. (DE #21). Plaintiff has attempted to effect service on Defendant Ponteras multiple times. First, Plaintiff delivered a copy of the summons and complaint to Ponteras's employer, NCL. *Id.* After receiving Defendant Ponteras's initial Motion to Quash<sup>2</sup> (DE #10), Plaintiff sent Defendant Ponteras a "Request to Waive Service," pursuant to Federal Rule of Civil Procedure 4(d). Fed. R. Civ. P. 4(d) (providing procedure for plaintiffs to request that defendants waive formal service of process). Defendant Ponteras did not return the waiver. (DE #21 at 2). Finally, Plaintiff served the Florida Secretary of State, and then directly mailed the complaint and summons, as well as a letter from the Secretary of State accepting service, to Defendant Ponteras at his last known address in the Phillipines. (DE #21 at 3, Exh. 1-2).

Defendant Ponteras's Motion and Reply focus on only two of Plaintiff's attempts at service: the leaving of the complaint and summons at the NCL offices, and the service upon the Florida Secretary of State. (DE #14, 23). He argues that these methods of service are improper under the Federal Rules of Civil Procedure, and that Plaintiff should have served

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<sup>2</sup>Defendant filed his first Limited Appearance Motion to Quash Service of Process and to Dismiss (DE #10) on April 21, 2011. He filed the Corrected Limited Appearance Motion to Quash Service of Process and to Dismiss (DE #14), now before the Court, on April 27, 2011 for the purpose of clarifying allegations related to the ship and island on which Plaintiff's injuries occurred. (DE #14, n.1).

him personally. (DE #14, 23). However, Defendant Ponteras does not address Plaintiff's claim that Plaintiff mailed the complaint and summons directly to him in the Philippines.

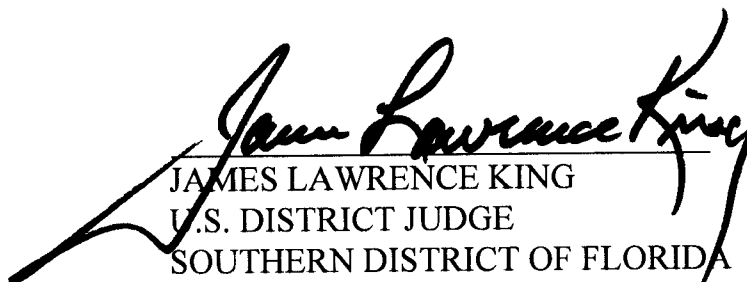
The docket sheet reflects that a summons for service abroad was returned executed on May 12, 2011. (DE #20). The affidavit of service states that the summons and complaint were mailed directly to Defendant Ponteras at his last known address in the Philippines by Plaintiff's counsel on May 11, 2011. (DE #20(1)). In addition, Plaintiff filed a copy of the stamped and addressed registered mail sent to Defendant Ponteras. (DE #20(2)). The filing reflects that a signature is required by the recipient. *Id.* Defendant Ponteras does not dispute that the materials were mailed, or that the mailing address is correct. This is a valid method of service under the Federal Rules of Civil Procedure. Rule 4(f) provides that an individual in a foreign country may be served by, "using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt." Fed. R. Civ. P. 4(2)(C)(2). Moreover, this is the type of personal service that Defendant Ponteras's Motion argues should have been utilized.

Accordingly, after a careful review of the record and the Court being otherwise fully advised in the premises, it is hereby

**ORDERED, ADJUDGED, and DECREED** that Defendant Rey Ponteras's Corrected Limited Appearance Motion to Quash Service of Process and to Dismiss (DE #14) is **DENIED**. Defendant Ponteras's original Limited Appearance Motion to Quash Service of Process and to Dismiss (DE #10) is **DENIED as moot**. Defendant Ponteras **SHALL**

respond to the Complaint by Answer or Motion within **twenty (20) days** of the date of this Order.

**DONE and ORDERED** in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 3rd day of June, 2011.

  
JAMES LAWRENCE KING  
U.S. DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

cc:

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