

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

RICARDO RODRIGUEZ, CHRISTA CAMPOS,	§	
INDIVIDUALLY AND AS NEXT FRIEND OF SON,	§	
NOEL RODRIGUEZ, A MINOR,	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION No. H-05-1129
	§	
M/V WASHINGTON RAINBOW II, HER	§	
ENGINES TACKLE, APPAREL, ETC., <i>IN REM</i> ,	§	
GOUMAS SHIPPING CO., S.A. AND	§	
WESTERN BULK CARRIERS A/S,	§	
<i>IN PERSONAM</i> ,	§	
Defendants.	§	

**ORDER**

Western Bulk Carriers GmbH (WBCG) has filed a motion to quash service or in the alternative to dismiss plaintiffs' claims without prejudice (Dkt. 42). Having considered the parties' submissions, the court concludes that plaintiffs have not properly served WBCG, but should be given additional time to do so.

WBCG is a German corporation headquartered in Hamburg, Germany. Plaintiffs attempted to serve WBCG by instructing the Texas Secretary of State to mail the summons and a copy of the complaint, without a German translation, directly to WBCG at its corporate address in Hamburg. Plaintiffs contend that they have effected proper service pursuant to Federal Rule of Civil Procedure 4(k)(2). Plaintiffs further contend that WBCG has a duty to avoid unnecessary costs by waiving service pursuant to Federal Rule of Civil Procedure 4(d)(2). WBCG contends that service by mail is not proper under the Hague Convention,

which requires service of a German translation of the papers through a Central Authority.

Federal Rule of Civil Procedure 4(h) allows for service upon a foreign corporation outside of the United States by any manner prescribed by Rule 4(f) governing service on foreign individuals, with the exception of personal delivery. Rule 4(f)(1) provides for service pursuant to any internationally agreed means, such as the Hague Convention.

The Hague Convention does not permit service by mail. *Nuovo Pignone, SpA v. Storman Asia M/V*, 310 F.3d 374, 384 (5th Cir. 2002). Therefore, mailing a copy of a summons and complaint directly to a defendant outside of the United States is ineffective. *Kim v. Frank Mohn A/S*, 909 F. Supp. 474, 479 (S.D. Tex. 1995). Federal Rule of Civil Procedure 4(k) does not provide an alternative to the Hague Convention. “Federal Rule of Civil Procedure 4(k)(2) permits personal jurisdiction over foreign defendants for claims arising under federal law where the defendant has sufficient contacts with the nation as a whole, but insufficient contacts to satisfy the due process concerns of the long-arm statute of any particular state.” *Id.* at 378 n.1. Rule 4(k)(2) describes the effect of serving process on a foreign corporation, but does not prescribe a *method* of effecting service of process.

Federal Rule of Civil Procedure 4(d)(2) does provide an alternative to service under the Hague Convention. Pursuant to Rule 4(d)(2) provides that a corporation subject to service under Rule 4(h) has a duty to avoid unnecessary costs of serving the summons. To take advantage of Rule 4(d)(2), the plaintiff may notify the defendant of the lawsuit and request waiver of service of the summons. The notice and request must (i) be in writing; (ii)

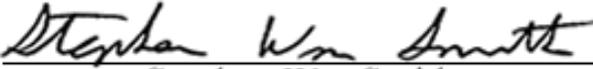
be sent through first class mail or other reliable means; (iii) be accompanied by a copy of the complaint; (iv) inform the defendant of the consequences of compliance and failure to comply with the request; (v) state the date on which the request was sent; (vi) allow a reasonable time for response; and (vii) provide an extra copy and prepaid means of compliance in writing. FED. R. CIV. PRO. 4(d)(2)(A-G). Unfortunately, Plaintiffs did not seek to avoid costs by sending a notice and request in accordance with Rule 4(d).

The court is sympathetic to plaintiffs' position. WBCG is represented by the same counsel, located in Houston, Texas, as defendant Western Bulk Carriers AS, which has already appeared in this action. Costs, not to mention delay, clearly could be avoided if WBCG were to agree to waive formal service of process or if counsel were to accept service. However, the court cannot order WBCG to do so. However, the court will give plaintiffs additional time to effect service under the Hague Convention. It is therefore

ORDERED that WBCG's motion to quash service is granted. It is further

ORDERED that Plaintiffs shall have 60 days from the date entry of this Order to effect service of process.

Signed at Houston, Texas on March 21, 2006.

  
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Stephen Wm Smith  
United States Magistrate Judge