

AT STAMFORD
123 HOYT STREET
STAMFORD, CT 06905

DOCKET NO: FST-CV-21-6053242-S

: SUPERIOR COURT

GALINA MYSHKINA

2024 JUN 11 P 12: 18

: JUDICIAL DISTRICT OF

: STAMFORD/NORWALK

V.

: AT STAMFORD

VLADIMIR GUSINSKI

: JUNE 11, 2023

MEMORANDUM OF DECISION

RE: DEFENDANTS MOTION TO DISMISS (DOCKET 116)

I. INTRODUCTION

The plaintiff initiated this action by summons and complaint returnable to the Superior Court for the Judicial District of Stamford/Norwalk on September 21, 2021. Initially, the defendant was defaulted for failure to appear and judgment pursuant to that default entered on December 13, 2021. The defendant took an appeal to the Appellate Court from that judgement on December 23, 2021. The Appellate Court reversed the decision of the Trial Court, finding that the Trial Court had inappropriately relied upon an affidavit of debt signed by the attorney for the plaintiff regarding the debt due under the promissory note. The Appellate Court “remanded for further proceedings consistent with this opinion.” The plaintiff again moved for judgment based upon the default, filing a military affidavit and new affidavit of debt, this time signed by the plaintiff. However, before the motion for judgment was heard, counsel for the

defendant entered an appearance on November 20, 2023, and subsequently filed this motion to dismiss on December 12, 2023.¹

II. THE MOTION TO DISMISS

The defendant now moves to dismiss the action for “insufficiency of service of process because at the time of service of the summons and complaint on August 26, 2021, the defendant did not reside at 93 Porchuck Road in Greenwich, Connecticut. That address was not the defendant’s usual place of abode.” In support of his motion to dismiss, the defendant filed a memorandum and an affidavit signed by the defendant. The affidavit of the defendant asserted that on August 26, 2021, the date of the service to the complaint, the defendant did not reside at 93 Porchuck Road in Greenwich, Connecticut, and it was not his usual place of abode. He stated that he has not lived with his wife since 2020 that he is now getting a divorce, that he was not in the United States on August 26, 2021, and has not resided in the United States since 2010.

At the initial proceeding on the motion to dismiss, the plaintiff contested the statements contained in the affidavit of the defendant and provided some documentary evidence to the contrary including recent checks indicating the defendant’s address was 93 Porchuck Road and governmental filings indicating that the defendant’s address was 93 Porchuck Road.

“A motion to dismiss may ...raise issues of fact, and would, therefore, require a...hearing [to determine the facts][A]ffidavits are insufficient to determine the facts, unless, like summary judgment, they disclose that no genuine issue as to a material fact exists....When

¹ Counsel for the defendant had entered appearance in the Appellate Court in 2021, and successfully obtained a reversal of the prior judgment based on the faulty original affidavit of debt. Neither party has raised the issue of whether the motion to dismiss is untimely because it is filed more than 30-days after the filing of the appearance of counsel for the defendant in the Appellate Court, though no appearance was filed in the Superior Court until the case was reversed and remanded. The motion to dismiss was filed within 30-days of counsels’ appearance in the Superior Court in November of 2023. See Connecticut Practice Book section 1-30. Because neither party has raised the issue and because the court has concluded that it has jurisdiction to hear this case as set forth herein, the court does not address the issue either.

issues of fact are disputed, due process requires that an evidentiary hearing be held with the opportunity to present evidence and to cross examine adverse witnesses....Moreover, a court cannot make a critical factual finding based on memoranda and documents submitted by the parties....” *Coughlin v. Waterbury*, 61 Conn. App. 310, 315 – 316 (2001). “When issues of fact are necessary to the determination of a court’s jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross examine adverse witnesses. *Standard Tallow Corp. v. Jowdy*, 190 Conn. 48, 56 (1983).

Pursuant to this mandated process the court scheduled an evidentiary hearing to determine the facts necessary to a determination as to whether or not the defendant was served at his “usual place of abode,” and, accordingly, whether the court had personal jurisdiction over the defendant necessary to adjudicate the claims raised in the complaint.

III. FACTS

At the evidentiary hearing the plaintiff called two witnesses. The plaintiff called Elena Konstantinou and the plaintiff testified herself. The plaintiff also introduced exhibits evidencing that the defendant was served at his usual place of abode and that the court has personal jurisdiction over the defendant necessary to adjudicate this case.

According to the return of service, the Marshal delivered the summons and complaint to 93 Porchuck Road, Greenwich, Connecticut on August 26, 2021, process was delivered to a person at the home. Thus, the contested issue before the court is whether on August 26, 2021, 93 Porchuck Road, Greenwich, Connecticut was a “usual place of abode” of the defendant. C. G. S. Section 52-54 requires the serving officer to leave an attested copy of the summons and complaint with the defendant or “at his usual place of abode.” Elena Konstantinou testified as follows. She is the wife of the defendant, though she and the defendant are in the process of

dissolving their marriage. She, her two sons, and the defendant have resided at 93 Porchuck Road since 2001.

In March of 2021 the defendant's visa was revoked and the defendant returned to Israel. At the time, he returned to Israel in March 2021 he left all of his personal items at 93 Porchuck Road including business records and clothing. His family continued to live at 93 Porchuck Road. The defendant returned from Israel sometime between of November 2021 and February 2022. When he returned, he went to 93 Porchuck Road but Elena would not let him stay, and she subsequently filed for a restraining order. At the time of his return, all of his belongings at 93 Porchuck Road including the clothing that he had not taken to Israel, his personalty, and his business papers including bank statements were all at 93 Porchuck Road. After the restraining order was issued, the defendant retrieved his personal belongings and though he attempted to return to 93 Porchuck Road, he never slept there because Elena would not allow it. The court finds the testimony of Elena credible in this regard.

The plaintiff testified that she received several checks from the defendant in April of 2021. The checks had the name of the defendant on them and immediately under his name was the address of 93 Porchuck Road, Greenwich, Connecticut. Those checks were returned for insufficient funds. The plaintiff also introduced certified copies of certain governmental records from the Connecticut Secretary of State Office indicating that the defendant was the president of a particular corporation and listed his address as 93 Porchuck Road. Those papers were filed with the Secretary of State's office in February of 2020. The testimony of Elena further evidences that multiple statements contained in the affidavit signed by the defendant filed with the motion to dismiss are inaccurate. The defendant chose not to testify or call any witnesses at the evidentiary hearing.

IV. DISCUSSION

Connecticut General Statute section 52-54 allows service of the summons and complaint to be made at “the usual place of abode” in the defendant.

“The usual place of abode has been defined as a place of residence within the state. It is well established, however, that one may have two or more places of residence within the state or in two or more states, and each may be a usual place of abode.... service of process will be valid if made in either of the usual places of abode....

Residence does not necessarily import domicile, nor does usual place of abode import domicile.... there is no relation between them, though they may be concurrent. A person may have two or more places of abode while he can only have one domicile.” *Argent Mortgage Company LLC v. Huertas*, 288 Conn. 568, 578 (2008) (Internal quotations and citations omitted.) See also *Clegg v. Bishop*, 105 Conn. 564 (1927)

“We think it may be said generally, that the place in which a married man’s family resides, with his consent, and where he has voluntarily resided with them, as his home, and which he has never abandoned, may well be considered as the place of his abode, unless such residence has been, and was intended to be, temporary and for transient purposes.” *Id.* at 579. See also *The Capital Light and Supply Company v. The Gunning Electric Company*, 24 Conn. Supp. 324 (1963).

In the instant case, the defendant clearly had resided at 93 Porchuck Road, Greenwich, Connecticut for many years. At all times his family resided there; his personal property was there. An employee that he employed as caretaker and chauffeur worked there on a regular basis. He used it as his business address for corporate filings and kept his banking statements there. While he temporarily had to relocate to Israel because of a problem with his visa, that temporary relocation did not result in 93 Porchuck Road ceasing to be his usual place of abode.

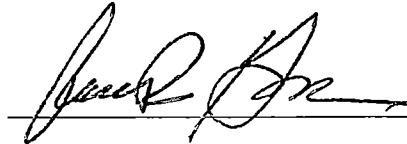
To some extent, this is analogous to the factual situation in *Argent Mortgage Company*, where a defendant was incarcerated but service was appropriately made at his home where his family resided prior to his incarceration. As in *Argent Mortgage Company* at the time of the service, there is no indication that the defendant did not intend to return to 93 Porchuck Road, and notably, neither the divorce nor the application for a restraining order had been initiated as

of the date of service. Those came some months later. Nor is there any evidence that the defendant did not intend to return to 93 Porchuck Rd. as of the date of the service of process.

Considering these facts and particularly that his family remained at 93 Porchuck Road, that his possessions remained in 93 Porchuck Road, that an employee continued to work at 93 Porchuck Road, that he represented to the public at large by Secretary of State filings and addresses on his personal checks that he resided at 93 Porchuck Road, the court concludes that 93 Porchuck Rd. was the defendant's usual place of abode on August 26, 2021. The court makes this finding by a preponderance of the evidence. Accordingly, the motion to dismiss must be denied.

V. CONCLUSION

For all these reasons the motion to dismiss is denied.



Genuario J.
J.T. R.

DECISION ENTERED IN
ACCORDANCE WITH THE
FOREGOING ON 6/11/24.
JUDGMENT 6/11/24.
