

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

JOHN MASON, JR.,

Plaintiff,

vs.

Case No. 2015-3643-CB

MICHIGAN REALTY SOLUTIONS, LLC,

Defendant/Third-Party Plaintiff,

and

ALTISOURCE SOLUTIONS, S.A.R.I.

Third-Party Defendant.

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OPINION AND ORDER

Third-Party Defendant Altisource Solutions S.A.R.I. ("Altisource") has filed a motion to quash service and set aside default. Defendant/Third-Party Plaintiff Michigan Realty Solutions, LLC ("Michigan Realty") has filed a response in which it stipulates to set aside the default but requests that Altisource's request to quash service be denied.

I. Facts and Procedural History

Altisource is an entity based in Luxembourg. On February 10, 2016, Michigan Realty mailed a copy of the summons and third-party complaint to Altisource in Luxembourg. On April 20, 2016, Michigan Realty obtain a default against Altisource. On May 26, 2016, Altisource filed its instant motion to set aside the default and to quash service on the basis that Michigan Realty's service did not comply with the Hague Convention. On June 14, 2016, Michigan Realty filed a response. While Michigan Realty has stipulated to setting aside the default, it opposes Altisource's request to quash service. On June 20, 2016, the Court held a hearing in connection with the

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motion and took the matter under advisement with respect to Altisource's request to quash service.

## II. Arguments and Analysis

In its motion, Altisource contends that the Court lacks jurisdiction over it. Specifically, Altisource contends that Michigan Realty failed to properly serve it with the third party complaint and summons. Specifically, Altisource asserts that Michigan Realty was required to effectuate service in compliance with the Hague Convention, and that its attempted service via mail does not comply with the Convention. The Hague Convention's service requirements were discussed by the Michigan Court of Appeals in *Frankenmuth Mut Ins Co v ACO, Inc.*, 193 Mich App 389; 484 NW2d 718 (1992). Specifically, the Court in *Frankenmuth* explained:

The Hague Convention is a multilateral treaty intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions will receive actual and timely notice of suit, and to facilitate proof of service abroad. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 US 694, 698, 108 S Ct 2104, 100 L Ed 2d 722 (1988). The convention applies in all cases where there is occasion to transmit a judicial or extrajudicial document for service abroad, and its application is mandatory in all cases to which it applies. *Id.* at 699. By virtue of the Supremacy Clause, U.S. Const., art. VI, the convention preempts inconsistent methods of service prescribed by state law in all cases to which the convention applies. *Id.*

The convention establishes specific procedures to be followed in accomplishing service of process. Articles 2 through 6 provide for service through a central authority in each country. The central authority of any country may require that all documents to be served through it be translated into the official language of that country. Hague Convention, art 5. Each signatory to the convention may ratify its provisions subject to conditions or objections. *Id.*, art. 21.

Fifty-five countries have signed the Hague Convention, including the United States, and Luxembourg. The Hague Convention, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. 6638, 658 U.N.T.S. 163. Luxembourg does not permit service of process by

mail. See United States Department of State International Judicial Assistance, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/luxembourg.html>. (Accessed June 20, 2016). Rather, Luxembourg requires any documents to be served to be sent to its central authority and be translated either to German or French. See Altisource's Exhibit D, Hague Convention Website, <https://www.hcch.net/en/states/authorities/details3/?aid=266> (Accessed June 20, 2016).

In this case, it appears undisputed that Michigan Realty has not even attempted to comply with the requirements of the Hague Convention; rather, Michigan Realty asserts that its service complies with the Michigan Court Rules. However, by virtue of the Supremacy Clause, U.S. Const., art. VI, the convention preempts inconsistent methods of service prescribed by state law in all cases to which the convention applies. *Frankenmuth*, 193 Mich App at 392. Consequently, the fact that Michigan Realty's service complied with the Michigan Court rules is immaterial. Further, because Michigan Realty's service did not comply with the Hague Convention, Altisource's request to quash service must be granted. *Id.* at 396.

### III. Conclusion

Based upon the reasons set forth above, Third-Party Defendant's motion to set aside default and quash service is GRANTED. Third-Party Defendant's request for attorney fees and costs is DENIED on basis that its request is not supported. This Opinion and Order neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: JUN 22 2016

  
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Hon. Kathryn A. Viviano, Circuit Court Judge