

ARTICLES

## Judgment Confirming Award Reversed Due to Hague Convention

By Mitchell L. Marinello – July 31, 2018

In [\*Rockefeller Technology Investments \(Asia\) VII v. Changzhou Sinotype Technology, Co., Ltd.\*](#), the California Court of Appeals (Division 3) Case No. B272170 (June 1, 2018) reversed a judgment confirming an arbitration award on the grounds that the summons and petition to confirm the award were not served in accordance with the [Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters](#) (the Hague Convention).

Rockefeller Technology Investments (Asia) VII (Rockefeller Asia), an American investment partnership, entered into a memorandum of understanding (MOU) with Changzhou Sinotype Technology Co., Ltd. (Sino-Type) to form a new company to market international fonts. The parties' relationship soured, and they disputed the legal significance of the MOU.

Rockefeller filed an arbitration against Sino-Type for breach of the MOU, and Sino-Type refused to participate. The arbitrator awarded Rockefeller a sum in excess of \$414 Million plus interest. Rockefeller then petitioned the California court to confirm the award and, in accordance with the provisions of the MOU, served Sino-Type with its summons and petition to confirm the award by Federal Express at Sino-Type's headquarters in China. On October 23, 2014, the California trial court confirmed the award after a hearing at which Sino-Type did not appear.

On January 29, 2016, more than one year later, Sino-Type filed a motion to set aside the judgment confirming the award, arguing that under the Hague Convention, Rockefeller had not validly served it with the summons and petition. The trial court stated that the MOU permitted service by Federal Express and ruled that the parties were permitted to contract around the Hague Convention's service requirements. Accordingly, it denied Sino-Type's motion.

The California Court of Appeals reversed. It analyzed the language of the Hague Convention, particularly Article 10, which permits alternate service "if permitted by the State of destination." Article 10 also says that "*provided the State of destination does not object*, the present Convention shall not interfere with . . . the freedom to send judicial documents, by postal channels, directly to persons abroad." (Emphasis added.) The California court took this language to mean that private persons cannot agree to be served by alternative service methods—such as mail service—if their nation has objected to them.

The court noted that China had filed a "reservation" objecting to the service of documents in China "by the methods provided in Article 10." Accordingly, Rockefeller's service of legal documents on Sino-Type by Federal Express was invalid, and the judgment confirming the award was void *ab initio*. The long time that Sino-Type waited before moving to set aside the judgment did not matter.

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In considering its decision, the California court reviewed two reported decisions that reached a contrary conclusion, one from New York and the other from California. The court noted that neither case analyzes the text of the Hague Convention, and it therefore found both cases unpersuasive.

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