

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for  
Sardaukar Holdings, IBC and Bradley C.  
Stark,

Plaintiff,

V.

CIVIL ACTION NO. 3:06-CV-263

ECF

DEREK SCHENK, Individually and d/b/a  
HALO FILM VENTURES,

**Referred to the U.S. Magistrate Judge**

Defendant.

**MOTION TO ALLOW ALTERNATE METHOD  
FOR SERVICE OF PROCESS UPON DEFENDANT**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark, (“Receiver”) and respectfully requests that this Court issue an Order allowing for an alternate method to achieve service of process upon Derek Schenk, Individually and d/b/a Halo Film Ventures (“Defendant”), and in support of such would respectfully show unto the Court as follows:

## BACKGROUND FACTS

1. On February 10, 2006, the Receiver filed his Complaint against Defendant seeking to recover \$260,000.00 transferred from the Receivership Estate. *Complaint* [Dkt. No. 1]. The Receiver retained a process server to effect personal service of process on the Defendant. *Affidavit of Process Server*, Exhibit “A” at ¶ 2; *Affidavit of Brent J. Rodine, Attorney for Receiver* (“Rodine’s Affidavit”), Exhibit “B” at ¶ 4.

2. Defendant is an individual resident of New York who has maintained various addresses there in the past twelve months. *Rodine's Affidavit*, Exhibit "B" at ¶ 4.

3. The process server tracked the Defendant's current whereabouts to 141 Dougherty Avenue, Holbrook, New York 11741. *Affidavit of Process Server*, Exhibit "A" at ¶ 3; *Rodine's Affidavit*, Exhibit "B" at ¶ 4. Despite numerous attempts, however, no contact could be made and the process server has concluded that the Defendant may be avoiding service. *Affidavit of Process Server*, Exhibit "A" at ¶¶ 3-4; *Rodine's Affidavit*, Exhibit "B" at ¶ 5.

4. The Receiver now respectfully requests permission to obtain alternative service upon Defendants by leaving a summons and copy of the complaint at 141 Dougherty Avenue, Holbrook, New York 11741 with any individual over sixteen years of age or, should no one appear, by leaving a copy at the front entry. This motion is supported by the following authorities, as well as the process server's affidavit stating that this method of service would be reasonably effective to give Defendant notice of this action. *Affidavit of Process Server*, Exhibit "A" at ¶ 5.

### **ARGUMENTS AND AUTHORITIES**

The Receiver now requests that this Court issue an Order allowing for an alternative method for achieving service of process under Rule 4(e)(1) of the Federal Rules of Civil Procedure. In relevant part, Rule 4(e)(1) allows this Court to order service of process by any method allowed under Texas law:

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person,<sup>1</sup> may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State;

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<sup>1</sup> The Defendant in this case is not an infant or incompetent person. *Rodine's Affidavit*, Exhibit "B" at ¶ 6.

Fed. R. Civ. Proc. 4(e)(1) (emphasis added). Among other things, the Texas Rules of Civil Procedure expressly allows service in any manner that will be reasonably effective in notifying the Defendant:

Rule 106. Method of Service.

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

\* \* \*

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

Tex. R. Civ. Proc. 106(b) (emphasis added). In this case, the Court should allow Receiver's process server to leave the summons and a copy of the Complaint at 141 Dougherty Avenue, Holbrook, New York 11741 with any individual over sixteen years of age or, should no one appear, by leaving a copy at the front entry. The attached affidavits clearly show that (1) Defendant can probably be found at that address, (2) numerous attempts were made to serve the Defendant at that location, and (3) although the process server has observed activity at that address, none of the inhabitants will answer the door to accept service of process. *Affidavit of Process Server*, Exhibit "A" at ¶¶ 3-5; *Rodine's Affidavit*, Exhibit "B" at ¶¶ 4-5. While leaving service of process upon Defendant's door is extraordinary, it appears to be a reasonably effective method of achieving service of process under these circumstances. *Affidavit of Process Server*, Exhibit "A" at ¶ 5.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully prays that this Court enter an Order (1) allowing service of process upon any person at least sixteen years of age at 141

Dougherty Avenue, Holbrook, New York 11741, (2) permitting a copy of the complaint and summons to be posted on the front entry of that address, should no one accept service in person, (3) calculating Defendant's response date under Federal Rule of Civil Procedure 4(a)(1)(A) from the date that such service is delivered or posted, and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

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By: /s/ Michael J. Quilling

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ATTORNEYS FOR RECEIVER