

CAUSE NO. 2022-12475

ELDON JOHNS,
Plaintiff

v.

ROBERT W. BERLETH,
BERLETH & ASSOCIATES, PLLC,
And NADIA BERLETH,
Defendants

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

DEFENDANTS ROBERT W. BERLETH AND BERLETH & ASSOCIATES, PLLC'S
MOTION TO QUASH SERVICE

Defendants, Robert W. Berleth and Berleth & Associates, PLLC's (collectively "Berleth"), file this its Motion to Quash Service under Texas Rule of Civil Procedure 122, and would respectfully show the Court:

For the purpose of service of process, notice, or demand:

- (1) the president and each vice president of a domestic or foreign corporation is an agent of that corporation;
- (2) each general partner of a domestic or foreign limited partnership and each partner of a domestic or foreign general partnership is an agent of that partnership;
- (3) each manager of a manager-managed domestic or foreign limited liability company and each member of a member-managed domestic or foreign limited liability company is an agent of that limited liability company;
- (4) each person who is a governing person of a domestic or foreign entity, other than an entity listed in Subdivisions (1)-(3), is an agent of that entity; and
- (5) each member of a committee of a nonprofit corporation authorized to perform the chief executive function of the corporation is an agent of that corporation.

TEX. BUS. ORGS. CODE § 5.255.

Berleth & Associates, PLLC is a Texas professional limited liability company that was incorporated in 2018 and is listed as manager managed. *See* Exhibit A. In its latest public information report, Robert Berleth is both the manager and agent for Berleth & Associates, PLLC. *See* Exhibit B. Under the Texas Business Organizations Code, Berleth & Associates,

PLLC must be served by serving its agent or a manager, both of which are Mr. Berleth. Plaintiff's petition reads Berleth & Associates, PLLC must be served by serving Mr. Berleth.

The Court may take notice of the return receipt for Berleth & Associates, PLLC, which is on file in this case, but Berleth is attaching a courtesy copy to this motion as Exhibit C. The Plaintiff chose to try to serve Berleth & Associates, PLLC by certified mail. *See* Exhibit C. The return receipt for the citation issued to Berleth & Associates is not signed by Mr. Berleth. Instead, it is signed by Lisa Marie Molin. Lisa Marie Molin is not a manager or agent of Berleth & Associates, PLLC. *See* Exhibit C. The return of service on file with the court establishes Mr. Berleth has not been served for the law firm. *See id.* This means the return of service, on its face, shows service on the law firm was ineffective and must be quashed.

Robert Berleth is an individual residing in Houston, Harris County, Texas. The Petition reads Mr. Berleth resides at 6731 Apple Valley Lane, Houston, Texas 77069. The process server attempted to serve Mr. Berleth, not at the address listed in the petition, but instead at 6722 Mossridge Drive, Houston, Texas 77069. *See* Exhibit D, declaration of process server. The affidavit reads that the process server attempted to serve Mr. Berleth at the Mossridge Drive address six times between May 6 and May 14. The process server identifies a vehicle in the drive belonging to someone other than Mr. Berleth. He attributes his belief Mr. Berleth lived at that address to hearsay from someone named Doug. He does not have a last name for this witness.

Substituted service was attempted by leaving the citation at the front door on July 2, 2022. The affidavit on file for substituted service reads that the return receipt for certified mail, as ordered by this Court, was not received.

The problem with serving Mr. Berleth at 6722 Mossridge Drive, Houston, Texas 77069 in May, June, or July of 2022 is Mr. Berleth did not reside at 6722 Mossridge Drive, Houston, Texas 77069 in May, June, or July of this year. *See* Exhibit E, affidavit of Robert Berleth. As a result, any attempted service on Mr. Berleth at that address would be ineffective.

By this motion, Berleth enter their appearance before this Court. Berleth request that the Court quash service upon them and enter an order requiring them to answer on the Monday following 20 days after the order is signed, as provided in Texas Rule of Civil Procedure 122.

FOR THESE REASONS, Robert W. Berleth and Berleth & Associates, PLLC's motion to quash service of process should be granted; Robert W. Berleth and Berleth & Associates, PLLC granted an extension of time in which to file their answer; and Robert W. Berleth and Berleth & Associates, PLLC be granted all other and further relief to which they show themselves to be justly entitled.

Respectfully submitted,

KERR WILSON, P.C.

By: /s/ Richard G. Wilson
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Attorneys for Defendants

CERTIFICATE OF CONFERENCE

On August 29, 2022, I wrote Plaintiff's counsel concerning this motion and the relief sought herein and Mr. Day, the attorney for Plaintiff, advised me he is opposed to the relief sought herein.

/s/ Richard G. Wilson

Richard G. Wilson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served on all counsel of record and pro se parties in accordance with the Texas Rules of Civil Procedure, on this 30th day of August, 2022, as follows:

Everett Day
Everett Day & Associates, PLLC
1811 Bering Drive, Suite 300
Houston, Texas 77057

Via Electronic Service

/s/ Richard G. Wilson

Richard G. Wilson

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Richard Wilson

Bar No. 00794867

rwilson@tkalaw.com

Envelope ID: 67779489

Status as of 8/30/2022 10:18 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Richard Gardner Wilson	794867	rwilson@tkalaw.com	8/30/2022 8:12:18 AM	SENT
Everett Day		service@edaylawfirm.com	8/30/2022 8:12:18 AM	SENT