SUPREME COURT OF CALIFORNIA
Electronically RECEIVED on 7/30/2018 at 4:42:52 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 7/30/2018 by Francisco Coello, Deputy Clerk

No. S249923

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

Changzhou Sinotype Technology Co., Ltd.,

Appellant/Defendant,

vs.

Rockefeller Technology Investments (Asia),

Respondent/Plaintiff.

Second Appellate District Court of Appeal
Civil No.: B272170

Los Angeles Superior Court
Case No.: BS149995

Judicial Officer Information:
The Honorable Randolph Hammock,
Presiding in Dept. 47 [(213) 633-0647]

ANSWER TO PETITION FOR REVIEW

After a Published Opinion

of the Second District Court of Appeal, Division Three

Case No. B272170

Steve Qi, Esq. (SBN 228223)
LAW OFFICES OF STEVE QI & ASSOCIATES
388 E. Valley Blvd., Suite 200
Alhambra, CA 91801
Tel: (626) 282.9878
Fax: (626) 282.8968
Email: steveqi@sqilaw.com

Attorney for Appellant and Answering party:
Changzhou Sinotype Technology Co., Ltd.

Steven L. Sugars, Esq. (SBN 154799)
LAW OFFICES OF STEVEN L. SUGARS
388 E. Valley Blvd., Suite 200
Alhambra, CA 91801
Telephone: (626) 243-3343
Facsimile: (626) 609-0439
Email: sugarslaw@gmail.com

Attorney for Appellant and Answering party:
Changzhou Sinotype Technology Co., Ltd.

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

A. Review in this case should be denied because the Court of Appeal's unanimous, well-reasoned, straightforward Opinion, as to which Petitioner failed to Petition for a Rehearing, is consistent with other decisions in this area, follows existing law and is neither controversial nor particularly important to the legal or business community..1

B. Statement of the Case..4

C. Statement of Appealability 7

II. FACTUAL AND PROCEDURAL BACKGROUND ARE SET FORTH IN THE COURT OF APPEAL'S OPINION...8

III. **STANDARD OF REVIEW AND FOR CONSIDERING A PETITION FOR REVIEW IN THIS CASE, WHEREIN PETITIONER FAILED TO FILE A PETITION FOR REHEARING IN THE COURT OFAPPEAL** 9

IV. **ARGUMENT** 12

A. THE COURT OF APPEAL WAS CORRECT IN FINDING THAT THE MOTION TO VACATE THE DEFAULT JUDGMENT CONFIRMING THE ARBITRATION AWARD SHOULD HAVE BEEN GRANTED BECAUSE THE JUDGMENT IS VOID FOR FAILING TO COMPLY WITH THE HAGUE CONVENTION WITH THE HAGUE CONVENTION............................12

V. CONCLUSION 25

CERTIFICATE AS TO WORD COUNT..28

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES Page

Peralta vs. Heights Medical Center, (1988) 485 U.S. 80 14

Water Splash, Inc. v. Menon, (2017) _U.S._, [137 S. Ct. 1504, 197 L.Ed.2d 826]...............2,20,25

Volkswagenwerk Aktiengesellschaft v. Schlunk (1988) 486 U.S. 694 15

FEDERAL COURT OF APPEALS CASES

Brockmeyer v. May, (9th Cir. 2004) 383 F.3d 798 19

DeJames v. Magnificence Carriers, Inc., (3d Cir. 1981) 654 F.2d 280..........................20

CALIFORNIA SUPREME COURT CASES

People v. Bransford (1994) 8 Cal.4th 885 11

People v. Peevy (1998) 17 Cal.4th 1184 11

CALIFORNIA COURTS OF APPEAL CASES

311 South Spring Street Co. v. Dept. of Gen. Services (2009) 178 Cal.App.4th 1009 7

Carlson v. Eassa (1997) 54 Cal.App.4th 684 7

Carlson v. Home Team Pest Defense, Inc., (2015) 239 Cal.App.4th 619 10

Carr v. Kamins (2007) 151 Cal.App.4th 929 7

Cochran v. Linn (1984) 159 Cal.App.3d 245 8

County of San Diego v. Gorham (2010) 186 Cal.App.4th 1215 10

Dr. Ing. H.C.F. Porsche A.G. vs. Superior Court (1981) 123 Cal.App.3d 755 14,25

Floveyor Internat., LTD. vs. Superior Court (1997) 59 Cal.App.4th 789 13

Generale Bank Nederland, N.V. v. Eyes of the Beholder Ltd. (1998) 61 Cal.App.4th 1384..........7

Honda Motor Co. vs. Superior Court (1992) 10 Cal.App.4th 1043 14

J.M. v. G.H. (2014) 228 Cal.App.4th 925 10

Kott vs. Superior Court (1996) 45 Cal.App.4th 1126 15,25

Shapiro v. Clark (2008) 164 Cal.App.4th 1128 7

Stowe vs. Matson, (1954) 94 Cal.App.2d 678 14

TREATIES OF THE UNITED STATES

Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, more commonly called the "**Hague Convention"** .... passim

A Specific Article of the Hague Convention: Article 1 2,15

A Specific Article of the Hague Convention: Article 5 21,24,25

A Specific Article of the Hague Convention: Article 8 16

A Specific Article of the Hague Convention: Article 10 2,6,15,16,19,20,21

A Specific Article of the Hague Convention: Article 15 16

A Specific Article of the Hague Convention: Article 16 16

Internet Sources pertaining to the Hague Convention:

Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") – also re-published via a list of hyperlinks at

http://www.courts.ca.gov/partners/documents/ea_HagueService 2,15

The Written Response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf.....................................23

Bureau of Consular Affairs, U.S. Dep't of State, *China Judicial Assistance,* https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/china.html...19,23

U.S. Dep't of State, Country Specific U.S. State Department Circulars, Judicial Assistance - China, in International Business Litigation & Arbitration 2005, Litigation and Administrative Practice Course Handbook Series, PLI Order No. 5929, 721 PLI/Lit 1311, 1311, 1313 (Practising Law Institute ed., March 2005)………………………………………………………………………...16

FOREIGN STATUTES AND REGULATIONS

People's Republic of China Civil Procedure Law, Article 260, re-codified in August 2012 as Article 276 (effective as of the year 2012)……………………………………………...16-18

People's Republic of China Civil Procedure Law, Article 261, re-codified in August 2012 as Article 277 (effective as of 2012)………………………………………………………16-18

CALIFORNIA STATUTES

Code of Civil Procedure section 473 6,7,14

Code of Civil Procedure section 904.1 7

CALIFORNIA RULES OF COURT

California Rules of Court, rule 8.500 1,9,13

LEARNED TREATISES

8 Witkin, Cal. Procedure (5th ed. 2016) Attack on Judgment in Trial Court, § 207, p. 812.........13

I. INTRODUCTION

A. Review in this case should be denied because the Court of Appeal's unanimous, well-reasoned, straightforward Opinion, as to which Petitioner failed to Petition for a Rehearing, is consistent with other decisions in this area, follows existing law and is neither controversial nor particularly important to the legal or business community

Answering party objects to the Petition for Review in this case because it fails to establish any ground for review under California Rules of Court, rule 8.500(b)(1), it mischaracterizes the Opinion of the Court of Appeal, and it misstates the law. In addition, answering party objects to the Petition for Review to the extent it claims that there were omissions or misstatements of the issues or the facts in the Court of Appeal's Opinion, because Petitioner failed to Petition for Rehearing, and Petitioner's counsel's assertion of expertise in the Chinese language or the meaning of Chinese civil procedure statutes is untimely, improper and lacking in foundation. In the underlying appeal, Appellant requested the Court of Appeal to decide whether, in this case, a $414 million dollar default judgment obtained, in essence, by mailing a letter to the defendant in China that it did not open, should be vacated because the Plaintiff did not comply with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents,

Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (hereinafter referred to as "the Hague Convention" or "the Convention")[1] governing international service of process as required under the terms that China acceded to the Convention, especially in light of the recent decision of the United States Supreme Court in Water Splash, Inc. v. Menon (2017) _U.S._,_ [137 S.Ct. 1504, 1509-1510, 197 L.Ed.2d 826] wherein it was decided that, although service by mail under the Convention is not prohibited, any service under the Convention must comply with the law of the forum where service is accomplished, and China expressly prohibited service by mail when it acceded to the Convention. As the Court of Appeal pointed out in its Opinion, at page 21, Petitioner did not offer any "plausible textual footing" for the proposition that parties may contract around the Hague Service Convention. Indeed, allowing the parties to contract around the Hague Service Convention in this case would clearly violate the terms under which

[1] Article 1 of the Hague Convention declares that the Convention "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Article 10(a) provides that, as long as the "State of destination" does not object, the Convention "shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad." The People's Republic of China has objected to Article 10. See Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") - also re-published via a list of hyperlinks at http://www.courts.ca.gov/partners/documents/ea_HagueService.pdf

China acceded to the Convention and would ignore Chinese law. In addition, allowing the parties to contract around the Hague Service Convention would fly in the face of the responses that China gave to the questionnaire presented to China by the governing body of the Hague Service Convention in which China expressly stated that parties may not circumvent the requirement of service on the central authority by agreeing to informal methods of service, such as merely agreeing to accept service. Thus, the Court of Appeal's Opinion is not controversial.

Due to the obviousness of the rule being stated by the Court of Appeal, as will be shown hereinbelow, it should also not be viewed as particularly important to the legal or business community. These requirements of service in China are publicly disseminated and ought to be well known and understood by the business and legal community. Unsurprisingly, the Petition for Review completely fails to show lack of uniformity in decisions, published or unpublished, of the California Courts of Appeal or even that the legal question is particularly important, except by making that bald assertion and pointing out that a lot of business occurs between California and China.

B. Statement of the Case

In its Opinion, Defendant and Appellant, CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD. ("SinoType"), a Chinese foreign corporation, was granted relief from a Default Judgment that was fraudulently obtained by Plaintiff and Respondent, ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII ("Rockefeller") (also referred to as "RTI Asia" or "RockAsia7") (collectively the "Parties") which the Court of Appeal found to be void ab initio for failure to comply with Hague Service Convention. The Judgment is void as a matter of law due to improper service of process as required by the Hague Service Convention because Rockefeller failed to serve its process through China's central authority, instead attempting to rely on a purported boilerplate contractual provision, written in English, that stated, without reference to the Hague Service Convention or Chinese law, that "notice" could be accomplished by Fedex. In addition, SinoType contended that the Judgment is also void because there was no valid and enforceable contract between the Parties: (1) the Memorandum of Understanding ("MOU"), also referred to as the "bèi wàng lù," was a *non-binding* agreement that anticipates the signing of the final "long form agreements"; (2) SinoType did not voluntarily and knowingly agree to the arbitration provision and the waiver of the Hague Convention's service requirements; (3) the MOU was obtained by fraud due

to Rockefeller's misrepresentations that the MOU was non-binding; and (4) Rockefeller did not pay any consideration to SinoType to support the existence of a valid and enforceable MOU. (See MOU at CT 242-245;[2] see also SinoType's Motion to Quash and to Set Aside Default Judgment for Insufficiency of Service ("Motion to Vacate") at CT 199-217; "long form agreements" attached as Exhibit H to Kejian "Curt" Huang's Declaration at CT 287-428.)

In 2012, Rockefeller instituted arbitration proceedings – turning a non-binding MOU and an imaginary $9.65 million stock transfer (200,000 AIG shares) into a $414 million dollar arbitration award ("Award"). On August 5, 2014, Rockefeller commenced this action by filing a Summons and Petition to Confirm Arbitration Award. (CT 9-30.) SinoType was not served with the Summons and Petition pursuant to the Hague Convention's requirements. Rather, SinoType was served by Fedex and email. (See Proof of Service at CT 34-36.) The trial court, misled into believing that the MOU and the arbitration award were valid and enforceable, and that Sinotype was properly served, confirmed the Award by default and entered Judgment on October 23, 2014. (See Judgment at CT 42-44.) As SinoType was not served with formal process and a copy of the Judgment, SinoType did not learn of

---

[2] References to the Clerk's Transcript shall be as follows: CT ___ (page #).

the Judgment's existence until March 2015, when Sinotype was informed by a client that there were enforcement proceedings against it. (See Motion to Vacate at CT 210; Declaration of Kejian "Curt" Huang ("Huang Decl."), ¶90 at CT 236.)

On January 29, 2016, SinoType filed a Motion to Quash and to Set Aside Default Judgment ("Motion to Vacate") for insufficient service of process under California Code of Civil Procedure section 473(d). (See Motion to Vacate at CT 199-217.) The hearing on the Motion to Vacate was heard on February 24, 2016 and counsel for both Parties made oral arguments. (See transcript of the February 24, 2016 hearing at RT 1-27.) Having heard the Parties' arguments, the trial court continued the hearing and ordered both Parties to submit supplemental briefs on the issue of whether China has objected to Article 10(A) of the Hague Convention (service by postal channels) and if so, whether individuals and corporations can contractually waive the requirements of the Hague Convention to agree to a different method of service. (See Feb. 24, 2016 transcript, in particular, at RT 23:17-24:13.) The continued hearing was on heard on April 6, 2016. (See transcript of April 6, 2016 at RT 301-336.) On April 15, 2016, the trial court denied Sinotype's Motion to Vacate. (See Order Denying Motion to Quash and to Set Aside at CT 817-823.)

On May 11, 2016, SinoType timely filed a notice of appeal from the Order Denying SinoType's Motion to Vacate. (CT 840-848.)

C. Statement of Appealability

An order denying a statutory motion to vacate or to set aside a default judgment, such as one made under Code of Civil Procedure section 473, is appealable as a special order after final judgment under Code of Civil Procedure section 904.1(a)(2). (Shapiro v. Clark (2008) 164 Cal.App.4th 1128, 1137; Generale Bank Nederland, N.V. v. Eyes of the Beholder Ltd. (1998) 61 Cal.App.4th 1384, 1394.) An order denying a motion to vacate a void judgment is also appealable based on the rationale that the order, giving effect to a void judgment, is itself void. (311 South Spring Street Co. v. Dept. of Gen. Services (2009) 178 Cal.App.4th 1009, 1014; Carr v. Kamins (2007) 151 Cal.App.4th 929, 933-934; Carlson v. Eassa (1997) 54 Cal.App.4th 684, 691.) "While a denial of a motion to set aside a previous judgment is generally not an appealable order, in cases where the law makes express provision for a motion to vacate such as under Code of Civil Procedure section 473, an order denying such a motion is regarded as a special order made after final judgment and is appealable under Code of Civil Procedure section 904.1, subdivision (b) [see now § 904.1, subd. (a)(2)]." (Generale Bank Nederland, N.V., *supra*, 61

Cal.App.4th at 1394 (quoting Cochran v. Linn (1984) 159 Cal.App.3d 245, 249).

II. FACTUAL AND PROCEDURAL BACKGROUND ARE SET FORTH IN THE COURT OF APPEAL'S OPINION

The Opinion of the Court of Appeal contains a brief restatement of the factual and procedural background of this case, in pages 2-13 of the Opinion. No Petition for Rehearing was filed. Therefore, for purposes of this Answer to the Petition for Review, for the sake of brevity, this answering party will defer to the Court of Appeal's Opinion's recitation of those facts and the procedural background.

The key facts which are most pertinent to the Court of Appeal's Opinion are as follows:

A. SinoType is a Chinese company headquartered in Changzhou, China, which specializes in developing and licensing Chinese fonts to technology companies in China and the United States. (See Huang Decl., ¶2 at CT 218.)

B. Although SinoType disputes the validity of the MOU, and believes that it was, at most, intended to be a non-binding agreement to agree, and nothing more, culturally, what is known as a "Bèi Wàng Lù," without force or effect (see Huang Decl., ¶18 at CT 221-222; Lan Decl., ¶10 at CT 474,) the MOU contained language which purports to state that notices can be sent to China via Fedex, and Rockefeller contends that this allowed Rockefeller to ignore the

Hague Convention's prohibition on serving parties in China without going through the Chinese Central Authority.

C. The Court of Appeal agreed with SinoType that any such attempted waiver is invalid as contrary to a treaty with China and contrary to China's own laws, which require service of process to go through its Central Authority despite language in an agreement purportedly allowing service of process via informal means. See Opinion of Court of Appeal inter alia, at pages 2-3.

III. STANDARD OF REVIEW AND FOR CONSIDERING A PETITION FOR REVIEW IN THIS CASE, WHEREIN PETITIONER FAILED TO FILE A PETITION FOR REHEARING IN THE COURT OF APPEAL

The issues presented to this Court, defined in California Rules of Court, rule 8.500(b)(1), are whether review is "necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.5000(b)(1)).

In the instant case, the standard for a Petition for Review by this Court is not met because there are no conflicting decisions in any District or Division of the California Courts of Appeal, published or unpublished, meaning that <u>case law is uniform</u> as to the issues presented in the Court of Appeal's Opinion, and, in addition, Petitioner has completely failed to show that the question of law is important, aside from making the bare assertion

and citing an article from "U.S. News" that claims that California does a lot of business with China (i.e., see Petition at page 10).

When considering what standard of review to apply on appeal of the denial of a motion in the trial court, generally, if the trial court's denial of said motion rests solely on a decision of law, then a de novo standard of review is employed on review in the Court of Appeal. (Carlson v. Home Team Pest Defense, Inc., (2015) 239 Cal.App.4th 619, 630 ("Carlson") (in that case review of the trial court's denial of a motion to compel arbitration)). Alternatively, if the court's order is based on a decision of fact, then the Court of Appeal would look for substantial evidence. (Carlson, 239 Cal.App.4th at 630.) When looking for substantial evidence, the Court of Appeal would, of course, apply the abuse of discretion standard. (J.M. v. G.H. (2014) 228 Ca1App.4th 925, 940; County of San Diego v. Gorham (2010) 186 Cal.App.4th 1215, 1225 ("Gorham").)

In the present case, appellant contended that the central issue, as in Carlson, was one of statutory interpretation, i.e. the meaning and application of the Hague Convention to service of legal papers by mail in China in violation of that country's limitations on service of process and, therefore, this Court should apply the de novo standard of review.

Nevertheless, the Court of Appeal applied the abuse of discretion standard, as in Gorham, as referenced at page 15 of its Opinion, and found

that there was an abuse of discretion in failing to recognize that there was a failure to serve the Petition to Confirm the Arbitration in compliance with the Hague Service Convention, at pages 25-28, and, also, independently reviewing the law, determined as follows, at page 22, of its Opinion:

> ". . . . Consistent with the Convention's language, we therefore conclude that parties may not agree by contract to accept service of process in a manner not permitted by the receiving country. Accordingly, because service on SinoType was effected by international mail, which is not a permitted form of service on Chinese citizens under the Convention, we conclude that SinoType was not validly served with the summons and petition to confirm the arbitration award. . . . ."

It is also legally significant that Rockefeller failed to file a Petition for Rehearing in the Court of Appeal.

CA Rules of Court, Rule 8.500(c)(2), provides, in pertinent part, as follows:

> "A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing."[3]

In the present case, Rockefeller failed to file a petition for rehearing. Therefore, as a matter of policy, this Court should disregard Rockefeller's arguments concerning any alleged misstatements of any issues or any facts

[3] (See, e.g., People v. Peevy (1998) 17 Cal.4th 1184, 1205-1206 and People v. Bransford (1994) 8 Cal.4th 885, 893, fn. 10.)

in the Court of Appeal's Opinion. For example, in its Petition, Rockefeller claims that the Court of Appeal misconstrued the facts concerning the wording of the Hague Convention and Chinese civil procedure statutes (based, in part, on Petitioner's new counsel's claim that he, himself, believes that various Chinese statutes should be translated differently). See Petition for Review at pages 16-19 and 20-23, respectively. In this regard, this Court should observe that the Court of Appeal made its findings regarding the Hague Service Convention and the translation and meaning of various Chinese statutes based upon a Motion for Judicial Notice filed by Appellant SinoType. See Court of Appeal Opinion, page 13, Footnote 4. Regardless, by failing to file a Petition for Rehearing, as a matter of policy, this Court should find that these issues and any similar issues in Rockefeller's Petition are waived.

In essence, Petitioner's counsel asserts, in the Petition for Review, that he, personally, has expertise in the Chinese language and the meaning of Chinese civil procedure statutes, and asks this Court to rely upon his expertise. See Petition for Review at pages 20-23. These claims of Rockefeller's new appellate counsel are untimely, improper and lacking in foundation, and this Answering party hereby objects to those claims in the Petition for Review at pages 20-23.

IV. ARGUMENT

A. THE COURT OF APPEAL WAS CORRECT IN FINDING THAT THE MOTION TO VACATE THE DEFAULT JUDGMENT CONFIRMING THE ARBITRATION AWARD SHOULD HAVE BEEN GRANTED BECAUSE THE

JUDGMENT IS VOID FOR FAILING TO COMPLY WITH THE HAGUE CONVENTION.

Since, as a matter of policy, it is anticipated that this Court will not consider issues and facts other than those stated in the Court of Appeal's Opinion, since no Petition for Rehearing was filed, this Answer will limit its argument, primarily, to those facts and issues. See CA Rules of Court, Rule 8.500(c).

The issues framed by the Court of Appeal's Opinion were as follows:

> ". . . . (1) mail service in China is not authorized by the Hague Service Convention;
>
> (2) the Convention's service provisions were not superseded by the MOU; and
>
> (3) Rockefeller Asia's failure to properly serve the summons and petition rendered the judgment void and, thus, subject to being set aside at any time. . . . ."
>
> See Court of Appeal's Opinion, at page 14.

The Court of Appeal was correct in finding that the Judgment in the Trial Court was void, since failure to comply with the Hague Convention renders any attempt at service of process void, even if the defendant has actual notice of the lawsuit. (See <u>Floveyor Internat., LTD. vs.</u>

Superior Court (1997) 59 Cal.App.4th 789, 795, citing Honda Motor Co. vs. Superior Court (1992) 10 Cal.App.4th 1043, 1049, and Dr. Ing. H.C.F. Porsche A.G. vs. Superior Court (1981) 123 Cal.App.3d 755, 762 ("Dr. Ing.")). The cases in this area specifically hold that such service is VOID AB INITIO, not merely voidable. The distinction between *void ab initio* and merely "voidable" is, of course, that a judgment which is void ab initio is a nullity, may be ignored and may be set aside at any time by any court, either a trial court or a reviewing court. Stowe vs. Matson, (1954) 94 Cal.App.2d 678. "A judgment or order that is invalid on the face of the record is subject to collateral attack. [Citation.] It follows that it may be set aside on motion, with no limit on the time within which the motion must be made." (8 Witkin, Cal. Procedure (5th ed. 2016) Attack on Judgment in Trial Court, § 207, p. 812; see, also, Peralta vs. Heights Medical Center, (1988) 485 U.S. 80,85-87 (proceeding to vacate default held timely though filed 6 years after judgment was entered where default was void)).

Such a motion to vacate a void judgment may be made under Code of Civil Procedure Section 473(d), which provides, in pertinent part:

> "(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

In Kott vs. Superior Court (1996) 45 Cal.App.4th 1126 (Kott), the Court of Appeal held that "[f]ailure to comply with the Hague Service Convention procedures voids the service even though it was made in compliance with California law. [Citation.] This is true even in cases where the defendant had actual notice of the lawsuit. [Citations.]" (Kott, 45 Cal.App.4th at 1136.)

The Hague Convention is a multilateral treaty formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. (Kott, 45 Cal.App.4th at 1133.) The 1964 version was intended to provide a simpler way to serve process abroad, to assure defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad. (Id., citing Volkswagenwerk Aktiengesellschaft v. Schlunk (1988) 486 U.S. 694, 698).

Article 1 of the Hague Convention declares that the Convention "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Article 10(a) provides that, as long as the "State of destination" does not object, the Convention "shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad." The People's Republic of China has objected to Article 10. See Hague Convention, China Declaration Notification, 3, available at

http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=r esdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention").

The Convention entered into force in the United States on February 10, 1969. China became signatory to the Hague Service Convention on March 2, 1991 and entered into force on January 1, 1992 with objections to service pursuant to Articles 8, 10, 15 and 16 of the Convention. With reservation to service in accordance with Article 8, China only permits direct service through the requesting state's diplomatic or consular agents when there is an attempt to serve process on their nationals. Service of process via postal channels, through judicial officers or other competent persons and interested persons specified in Article 10(a)(b)(c) is prohibited in China under the Hague Service Convention. See U.S. Dep't of State, Country Specific U.S. State Department Circulars, Judicial Assistance - China, in International Business Litigation & Arbitration 2005, Litigation and Administrative Practice Course Handbook Series, PLI Order No. 5929, 721 PLI/Lit 1311, 1311, 1313 (Practising Law Institute ed., March 2005). Under current Chinese civil procedure law, service of process is regarded as a "judicial" or "sovereign" act that may not be performed by a private person. The People's Republic of China in Articles 260 and 261 of its Civil

Procedure Law, which was in effect in the year 2012 when the Petition to Confirm the Arbitration Award was allegedly served by mail, and which remains in force today, although re-codified as Articles 276 and 277, has detailed the sole means for foreign litigants to obtain international judicial assistance in China. See People's Republic of China Civil Procedure Law, arts. 260 & 261, subject of a Motion for Judicial Notice in this case which was granted, as referred to in the Court of Appeal's Opinion, page 13, Footnote 4 (hereinafter the "MJN").

Then effective Article 260 of the Civil Procedure Law of the People's Republic of China (translated into English) (see MJN) provides, in pertinent part:

> "Article 260 A people's court and a foreign court may mutually request each other for service of documents, investigation, evidence collection and other litigation acts on their respective behalf in accordance with the international treaties concluded or acceded to by the People's Republic of China or according to the principle of reciprocity.
>
> If any matter for which a foreign court requests assistance harms the sovereignty, security or social public interest of the People's Republic of China, a people's court shall refuse to enforce the matter."

Then effective Article 261 of the Civil Procedure Law of the People's Republic of China (translated into English) (see MJN) (hereinafter "Article 261") provides, in pertinent part:

> "Article 261. A request for and the provision of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China, and in the absence of treaty relations, shall be conducted through diplomatic channels.
>
> An embassy or consulate of a foreign country in the People's Republic of China may serve documents on, investigate, or collect evidence from the citizens of that country, provided, however, that the laws of the People's Republic of China are not violated and that no compulsory measures are adopted.
>
> Except for the circumstances specified in the preceding paragraph, **no foreign agency or individual may serve documents**, conduct investigations or collect evidence **within the territory of the People's Republic of China** without the consent of the in-charge authorities of the People's Republic of China." [Emphasis added]

Article 261 states that any request for judicial assistance "shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China" or through diplomatic channels. People's Republic of China Civil Procedure Law, arts. 260 & 261 (see MJN). The Hague Service Convention is precisely the international treaty contemplated by Article 261 to which China has acceded with the intention of channeling all requests for judicial assistance through the mechanism provided by the treaty and China's implementing legislation in compliance with the Hague Service Convention. In acceding to the Hague Service Convention, China took a limited reservation with regard to service of process by mail, further indicating its determination to control the intrusion of foreign legal process on Chinese judicial sovereignty. Indeed, according to the U.S. State Department's website,

service of process by mail should NOT be used in China. Bureau of Consular Affairs, U.S. Dep't of State, *China Judicial Assistance,* https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/china.html.

> "China . . .
> Party to Hague Service Convention? Yes
> Party to Hague Evidence Convention? Yes
> Party to Hague Apostille Convention? Yes
> Party to Inter-American Convention? No
> Service of Process by Mail? No"

Although the Hague Convention "liberalized service of process in international civil suits," (see Brockmeyer v. May, (9th Cir. 2004) 383 F.3d 798, 801), it does not, by itself, provide an affirmative answer to what specific types of service are allowed in a particular case.

The English text of Article 10 of the Convention reads as follows:

"Provided the State of destination does not object, the present Convention shall not interfere with—

"(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

"(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

"(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination."

In Water Splash, Inc. v. Menon (2017) _U.S._,_ [137 S.Ct. 1504, 1508, 197 L.Ed.2d 826] ("Water Splash"), a unanimous United States Supreme Court, recently resolved a split between the Second Circuit and Eighth Circuit Courts of Appeals and held that the Convention does not prohibit service by mail but also held, "this does not mean that the Convention affirmatively authorizes service by mail." (Id.) The Court then went on to state that, "in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: **first, the receiving state has not objected to service by mail**; and second, service by mail is authorized under otherwise-applicable law." [emphasis added] (Id.)

Service on a Chinese company by mail is not effective in California or anywhere else in the United States, as California and other U.S. courts have held that formal objections to service by mail under Article 10(a) of the Convention are valid. (Dr. Ing H.C. F. Porsche A.G. v. Superior Court, (1981) 123 Cal. App. 3d 755, 761 (rejecting attempt to serve a German defendant by mail where Germany had objected to Article 10(a) of the Convention)). "By virtue of the supremacy clause, the [Hague Service Convention] overrides state methods of serving process abroad that are objectionable to the nation in which the process is served." (See DeJames v. Magnificence Carriers, Inc., (3d Cir. 1981) 654 F.2d 280).

It is beyond reasonable dispute that China has objected to service by mail since China has objected to Article 10 which is the Article providing for service by mail. It is also beyond dispute that China views attempts to serve its citizens by mail as an insult to its sovereignty and a violation of the treaty it entered into with the United States. It is beyond dispute, also, that China does not recognize or permit informal service on its citizens even by their own consent under Article 5 of the Convention.

The English text of Article 5 of the Convention reads as follows:

> "Article 5 - The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –
>
> a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
>
> b) by a particular method requested by the applicant, **unless such a method is incompatible with the law of the State addressed**.
>
> Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.
>
> If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.
>
> That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document." [emphasis added]

Proper service under the Hague Convention is effected through the designated Chinese Central Authority in Beijing, which is the "Bureau of International Judicial Assistance, Ministry of Justice of the People's Republic of China". A Plaintiff, which includes a Plaintiff that is suing in a California Court, seeking to sue a company which resides within the territorial boundaries of the People's Republic of China must submit the following to the Ministry of Justice:

a. A completed United States Marshals Service Form USM-94

b. The original English version of the documents to be served (the summons must have the issuing court's seal)

c. The Chinese translation of all documents to be served.

d. A photocopy of each of these documents. (See below.)

The U.S. State Department's website provides, as follows:

> "China is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters. Complete information on the operation of the Convention, including an interactive online request form are available on the Hague Conference website. Requests should be completed in duplicate and submitted with two sets of the documents to be served, and translations, directly to China's Central Authority for the Hague Service Convention. The person in the United States executing the request form should be either an attorney or clerk of court. The applicant should include the titles attorney at law or clerk of court on the identity and address of applicant and signature/stamp fields. In its Declarations

and Reservations on the Hague Service Convention, China formally objected to service under Article 10, and does not permit service via postal channels. For additional information see the Hague Conference Service Convention website and the Hague Conference Practical Handbook on the Operation of the Hague Service Convention. See also China's response to the 2008 Hague Conference questionnaire on the practical operation of the Service Convention."

Bureau of Consular Affairs, U.S. Dep't of State, *China Judicial Assistance,*
https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/china.html

In the written response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States, China specifically indicates that it does not permit its citizens to agree to informally accept service without involvement of the Central Authority and without the documents being translated into the Chinese language. See Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf, at page "19" thereof:

"c. Informal delivery (Art. 5(2))
[question] (i) Does the law of your State provide for informal delivery of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?
. . . .
[answer] [X] NO";

and see, also, Hague Service Convention Questionnaire, Questions for Contracting States (2008), at:

http://www.hcch.net/upload/wop/2008china14.pdf, at page "21" thereof:

"C. Translation requirements (Art. 5(3))
30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):

. . . .

[X] YES - please indicate what these requirements are, in each of the following set of circumstances:

a. Formal service (Art. 5(1) a)):
In circumstances where the/ a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) a), that the document be translated into another language (i.e., one of the official languages of your State)?

[X] YES - please indicate why:

According to the domestic law, the documents to be served must be in Chinese language."

Completely ignoring the rules of service of process required by the Hague Convention, Respondent Rockefeller in this case obtained the Default Judgment described above by transmitting the Petition to confirm the arbitration award to SinoType in China via postal channels without complying with the Hague Convention in any way, attempting to rely on an invalid waiver of proper service in the underlying document which Plaintiff and Respondent Rockefeller claims was a written agreement, but which, as explained above, was not a legally binging contract since it merely stated that further "Long form Agreements" were to be created, and which was only a

memorandum of understanding, culturally, a Bèi Wàng Lù, without force or effect. Parties may not waive due process procedures created by the Hague Convention in the manner in which Rockefeller has claimed was done in this instance. China does not permit parties to informally waive their rights to service of legal documents under Article 5 of the Convention. China does not permit legal documents to be served unless they are translated into Chinese and served formally by the Central Authority in China. China does not permit legal documents to be served by mail, "Federal Express" or "email". Therefore, the Petition to confirm the award, the award, and, indeed, the arbitration notices themselves, were not properly served in compliance with the Convention, and the Default Judgment is void ab initio since the attempted service violated a treaty of the United States with the People's Republic of China under Dr. Ing. and Kott, and, indeed, under the U.S. Supreme Court's recent decision in Water Splash wherein it was held that, for service by mail under the Convention to be effective, it must be something that "the receiving state has not objected to". Dr. Ing., 123 Cal. App. 3d at 761; Kott, 45 Cal.App.4th at 1136; and Water Splash, 137 S. Ct. at 1508.

V. CONCLUSION

Despite the evidence submitted by SinoType and SinoType's arguments that the China's accession to the Hague Convention does not

permit informal arrangements for service, waiver of Hague Convention service, or service by mail, and the evidence that the entire MOU (including the arbitration provision and the supposed waiver of the Hague Convention) was void due to its nonbinding inherent nature, due to Faye's misrepresentations, that the MOU was not binding, and that the MOU is void for lack of consideration, the trial court refused to look at the evidence, even in the face of such an inconceivable award of $414 million, and the glaring fact that Rockefeller never provided any consideration, whether it is AIG stock or partnership interests of Rockefeller or RFM to support a binding, valid, and enforceable MOU.

The Court of Appeal found this to be an abuse of discretion on the part of the Trial Court, found the Judgment to be void, and reversed the Trial Court's Order, ordering that the motion to vacate and set aside the judgment be granted and remanded the case to the Trial Court.

This was the correct decision, but, more importantly,

(1) no Petition for Rehearing was filed, thereby waiving, as a matter of policy as to this Court, any potential claim that the issues or facts as framed by the Court of Appeal were misstated or contained omissions, and

(2) the standard for a Petition for Review by this Court is not met because there are no conflicting decisions in the Courts of Appeal, published

or unpublished, meaning that case law is uniform as to the issues presented in the Court of Appeal's Opinion, and, moreover, Petitioner has completely failed to show that the question of law is important, aside from making the bare assertion and citing an article from "U.S. News" that claims that California does a lot of business with China (i.e., see Petition at page 10).

Accordingly, the Petition for Review should be denied.

Date: July 30, 2018 LAW OFFICES OF STEVEN L. SUGARS

BY: ______________________

Steven L. Sugars
Attorney for Defendant/Appellant:
CHANGZHOU SINOTYPE
TECHNOLOGY CO., LTD.

CERTIFICATE AS TO WORD COUNT

I, Steven L. Sugars, certify that the foregoing Answer to Petition for Review is within the limit provided by the rules of this Court, and that my computer reports that the number of words in the foregoing materials, exclusive of the title page, tables, signature block and exhibits, if any, is 6,194.

Dated: July 30, 2018

Steven L. Sugars
Attorney for Defendant and Appellant

PROOF OF SERVICE

I am an attorney at law, licensed to practice before all the courts of the state of California and I am attorney of record for Defendant and Appellant in this case. My business address is 388 E. Valley Blvd., #200, Alhambra, CA 91801.

On July 30, 2018, I personally served interested parties in this case by depositing true and correct copies of the foregoing document, Answer to Petition for Review, in the United States Mail at Pasadena, California, first class postage fully prepaid, in sealed envelopes addressed as follows:

BLUM COLLINS, LLP — 1 copy
Steve A. Blum, Esq.
Chia Heng (Gary) Ho, Esq.
707 Wilshire Boulevard, Suite 4880
Los Angeles, California 90017

Civil Filing Clerk, for delivery to — 1 copy
Judge Randolph Hammock
Los Angeles County Superior Court,
111 N. Hill Street, Dept. 47
Los Angeles, CA 90012

Clerk/Executive Officer — 1 copy
Court of Appeal, Second Appellate District
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

In addition, I provided an electronic copy of the brief to the Court of Appeal at the time of filing in compliance with CRC, rule 8.212(c)(2).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 30, 2018

Steven L. Sugars, declarant

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 7/30/2018 by Francisco Coello, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII v. CHANGZHOU SINOTYPE TECHNOLOGY CO.**
Case Number: **S249923**
Lower Court Case Number: **B272170**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **sugarslaw@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW (WITH ONE TIME RESPONSIVE FILING FEE)	Answer to Petition for Review

Service Recipients:

Person Served	Email Address	Type	Date / Time
Chia Heng Ho Blum, Collins LLP 00229995	ho@blumcollins.com	e-Service	7/30/2018 4:38:05 PM
Gary Ho Blum Collins, LLP 229995	ho@blumcollins.com	e-Service	7/30/2018 4:38:05 PM
Steve Qi Law Offices of Steve Qi & Associates 00228223	steveqi@sqilaw.com	e-Service	7/30/2018 4:38:05 PM
Steven Blum Blum Collins, LLP 133208	blum@blumcollins.com	e-Service	7/30/2018 4:38:05 PM
Steven Sugars Law Offices of Steven L. Sugars 154799	sugarslaw@gmail.com	e-Service	7/30/2018 4:38:05 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/30/2018
Date

/s/Steven Sugars
Signature

Sugars, Steven (154799)
Last Name, First Name (PNum)

Law Offices of Steven L. Sugars
Law Firm