Lousy Service

BY LAWRENCE SAVELL

Did you know that every single old car case has involved some form of service? Did you know that every single lawsuit ever brought regardless of the subject matter has involved some form of service?

Well, they have. The key is that I am talking about *service of process*, the method of formally commencing a lawsuit by giving the defendant notice of (alerting him, her, or it to) the action. In the ordinary case, a person named as a defendant in a summons and complaint does not officially become a party until served (provided) with such papers. If the service is not performed, or is not performed properly, the court may lack jurisdiction over (the right to decide disputes regarding) the defendant. Service is only effective when it is made pursuant to the appropriate method authorized by statutes or rules.

Thus, if you are a plaintiff, it is important for you to make sure that proper service was made so that your case can proceed. If you are a defendant, it is also important, as improper or inadequate service may, depending upon the circumstances, be grounds for stopping the case against you from going forward, at least temporarily.

The question of whether service was adequate in the context of a dispute involving a collector car was recently discussed in *Holewa v. Sajda*, decided on May 17, 1996 by the Superior Court of Connecticut.

According to the Court, on February 22, 1996, Bruce Holewa filed a four-count complaint alleging breach of contract, breach of warranty, misrepresentation, and violation of the Connecticut Unfair Trade Practices Act (CUTPA) against Joseph H. and Mary Katherine Sajda. The lawsuit allegedly arose out of Holewa's purchase of a 1967 Ford Mustang from the defendants.

On March 21, 1996, the defendants filed a motion to dismiss for lack of personal jurisdiction, asserting that they were not properly served with the complaint pursuant to the applicable Connecticut statute. Holewa did not file any memorandum in opposition to that motion; in court he argued that the defendants received actual notice (they knew of the lawsuit).

The Court began with the statute, which said: "except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state."

Courts generally presume that the sheriff or other officer who makes the service truthfully reports such matters in his or her return (written confirmation). The burden usually is on the defendant to prove that service was inadequate.

The court further noted that "Where an officer attests that the place where the summons was served was the defendants' usual place of abode, he is attesting to a fact which, unlike the fact of personal or in-hand service, is ordinarily not within his own personal knowledge...Accordingly, the rule that an officer's return is only prima facie evidence of the facts stated therein and may be contradicted by showing the facts to be otherwise is particularly applicable where the validity of abode service is challenged...Where there is undisputed evidence that the officer mistakenly left the process at a place other than the defendants' place of abode, the court must find that there was no service of process and that it 'acquired no jurisdiction over the person of the defendant...which would authorize it to render a valid judgment against him.'"

"Abode" in this context is "the place where the defendant would most likely have knowledge of service of process and is generally recognized as the place where he is living at the time of service." The Sheriff's return indicated that he made abode service at an address he obtained from the records of the state Motor Vehicle Department and the local Post Office. The defendants, however, submitted affidavits in which they attested that they did not live at that address at (or after) the time of service. The Court found that the defendants' affidavits rebutted the presumption created by the sheriff's return. Based on this fact, and the fact that the plaintiff submitted no other evidence showing that the service address was the usual place of abode, the Court granted the defendants' motion to dismiss.

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at http://www.carcollector.com