

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

KEWU ZHAN,)	
)	
Plaintiff,)	
)	No. 4:18-cv-04126
v.)	
)	Judge Darrow
PATRICK F. HOGAN,)	
CMB EXPORT INFRASTRUCTURE)	Magistrate Hawley
GROUP 48 LP,)	
CMB EXPORT LLC,)	
CMB ILLINOIS REGIONAL CENTER)	
LLC d/b/a CMB REGIONAL CENTERS, and)	
NK IMMIGRATION SERVICES LLC,)	
Defendants.)	

MOTION FOR SERVICE BY PUBLICATION AND
MOTION FOR CMB EXPORT LLC TO
EXPLAIN CORPORATE STRUCTURE

Plaintiff hereby moves for (i) an Order allowing service by publication upon defendants NK Immigration Services LLC (“NK”) and Patrick F. Hogan (“Hogan”), and (ii) an Order requiring the defendant CMB Export LLC (who has appeared) to explain the convoluted, byzantine structure of its business entities, and the whereabouts of its owners and affiliates.

As the attached Memorandum sets forth, service by publication is disfavored, but federal courts in this Circuit have allowed it when traditional methods of service are impractical. In this case, there are three (3) good reasons to allow it.

First, NK and Hogan are actively evading service.

Second, the defendants have created a grotesque monstrosity of identically-named and impossible-to-find companies, turning the service phase of this lawsuit

into a protracted and costly guessing game.

Third, no injury or due process violation will result from service by publication. Two of the corporate defendants have already been served and the remaining defendants are related by common ownership and control -- they have the same manager (Hogan); they have the same principal office in Rock Island; they are all represented by the same law firm; they all know and have seen the lawsuit filed against them; and they know that process servers are chasing them.

The defendants should not play hide-and-seek behind the impossibly complex structures they have created.

CMB Export LLC

Take CMB Export LLC as an example. The PPM says that defendant CMB Export LLC is a **California** limited liability company. And indeed, there is – or rather there was - a California limited liability company with that name. But there is – and has been -- a **Texas** limited liability company with that exact same name. The Illinois Secretary of State shows CMB Export LLC as an active **Texas** limited liability company doing business at 7819 42nd Street West in Rock Island with Patrick Hogan as the sole manager.

So there is confusion even about a defendant that has filed an appearance. Is CMB Export LLC a California company as per the PPM, or is it a Texas company as per the Illinois Secretary of State?

It gets stranger. The State of California's business records show that CMB

Export LLC (the one in Texas) merged with CMB Export LLC (the one in California) on June 2, 2016, and the Texas version survived. But on July 10, 2018, the Texas version of CMB Export LLC turned around and filed an application to register as a foreign LLC in California. So there were two CMB Export LLC companies, both managed by Hogan, and yet in different states, one referenced in the PPM and another referenced by the Illinois Secretary of State, yet one was merged out of California into Texas and then went back to file as doing business in California, and they all have their office in Rock Island, Illinois.

But hold on. Who manages this company? The Illinois Secretary of State has Mr. Hogan as the sole manager of CMB Export LLC from Texas that is operating out of 7819 42nd Street West in Rock Island. But the California Secretary of State says that as of July 24, 2018, CMB Export LLC is managed by “Texas 3 Bobs, LP,” whatever that is, which also has a business address of 7819 42nd Street West in Rock Island.

So how many companies are there? How many managers? And if CMB Export LLC is now itself owned by a limited partnership named Texas 3 Bobs, LP, then who are the general and limited partners in this entity which manages the manager of the co-general partner of the fund? From how many locations do all these entities and persons operate? And why wasn't the PPM supplemented to inform the investors?

This is not academic. CMB Export LLC has control in this one fund (which is just one fund of the more than 60 funds that CMB manages) of nearly half a billion

dollars of Chinese investor money. Let's be clear what this means: Plaintiff (and likely the other 800-plus Chinese investors in this one fund) cannot figure out which company and which manager is managing their investment of nearly half a billion dollars. The co-general partner is in California, and also in Texas, but now only in Texas, but then back in California, and the manager may have changed from a person to a limited partnership, but they are also in Illinois. This is a corporate shell game. If no American can figure it out, a Chinese limited partner from 7000 miles away doesn't stand a chance.

See Exhibit 1 for all documents referenced above.

“CMB Regional Centers” (the d/b/a of CMB Illinois Regional Center LLC)

In several federal court cases, including the *CMB v. Atteberry* case before this Court, CMB styles itself as “CMB Export LLC and CMB Summit LLC d/b/a CMB Regional Centers.” See, for example, 2017 WL 2766440 (June 26, 2017).

But CMB Export LLC and CMB Summit LLC never held that assumed name as a d/b/a, according to the Illinois Secretary of State.

According to the Secretary of State, it was CMB Illinois Regional Center LLC (an entirely differently entity) that held the assumed name of “CMB Regional Centers.” And the Illinois Secretary of State says that the assumed name “CMB Regional Centers” went inactive as of December 30, 2015.

If the name “CMB Regional Centers” is inactive, and it was never connected to CMB Export LLC in the first place, then how can it be listed as a d/b/a of CMB

Export LLC in the Court documents?

Has this very Court listed the wrong parties in its decisions on CMB?

And if the assumed name is inactive, why does their web site continue to refer to “CMB Regional Centers” (<https://www.cmbeb5visa.com/about-us/privacy-policy/>)? What is the relationship between CMB Regional Centers (an inactive d/b/a) and all the other entities?

The larger point here is that Hogan and CMB themselves cannot keep their own corporate names straight, even in front of a federal Court. If the company cannot apply its own names consistently, there is no way for Plaintiff to figure out which entity is doing what. They have created a ball of confusion. It is their mess and they should explain it, if they can.

All documents on CMB Regional Centers are attached as Exhibit 2.

NK Immigration Services LLC

NK, the co-general partner of the limited partnership fund at issue in this case, made a political donation of \$11,100 to Neil Anderson for Illinois State Senate on June 12, 2017. On that donation, NK’s listed address was 7819 42nd Street West in Rock Island.

But the Illinois Secretary of State says that NK merged on December 30, 2015, and is no longer active in Illinois.

So how could NK make a political donation in 2017?

Is there another NK? There were two CMBs, so maybe there are two NKs.

The PPM (page 1) says that Patrick Hogan is the sole manager of NK. But the Illinois Secretary of State says that both Patrick and Joan Hogan are co-managers.

Does NK still exist? In what State? How many managers does it have? Was it merged – and into whom? How can it make political contributions if it is merged and inactive?

To answer these questions, Plaintiff's counsel hired Hawkeye State Process Servers of Iowa City to serve NK and Hogan, but their process server in the Quad Cities came back and said that the address must be incorrect because the only thing he could find at 7819 42nd Street West was Rock Island Auction. We instructed him to go back again and dig deeper. Inquiring further, he encountered a woman who refused to take service for NK, even though she acknowledged that this was the office of NK, and that the Hogans would be around some time in the future. All of this presumes that the NK company still exists, which runs counter to what the Illinois Secretary of State says.

All documents on NK Immigration Services LLC are attached as Exhibit 3.

Stop and consider this. Plaintiff's \$550,000 life savings and nearly half a billion dollars of Chinese money (\$450,000,000) is being managed by co-general partners CMB Export LLC and NK, yet no one can figure out which state they are in, whether they still exist, who manages them, or whether they are merged, active, or inactive. The man behind all this – Hogan - is in an undisclosed location. Under these circumstances, the

Court should force the defendants to clarify their structure and thereby allow for coherent service of process, or else permit service by publication.

Mr. Hogan Individually

Mr. Hogan – so we are told – is the manager of more than 60 large investment funds, and he is simultaneously the CEO of the world’s largest gun auction, and simultaneously the CEO of Up Management, and has two private planes and a private hanger at Quad Cities airport. He does all this from CMB “headquarters” at 7819 42nd Street West, Rock Island, Illinois, 60201.

Or does he?

When Plaintiff and his server went to CMB “headquarters” they didn’t see a single person associated with CMB. It was only after a protracted wait that the receptionist who worked for Rock Island Auction told us that CMB was “out in the back,” and then after a long wait the COO came out to say he wouldn’t reveal Mr. Hogan’s home address. We never saw any offices.

Plaintiff had Hawkeye State Process Servers run a skip trace to find Hogan, and also call CMB to get Hogan’s whereabouts, but they had no luck getting a solid date on when Hogan would be at the “headquarters” or where he lived.

The other avenues have been cut off. Hogan’s law firm refuses to take service for him or give out his address. Plaintiff have examined public record sources and cannot find Hogan’s address, or even determine if he lives in Illinois, Texas, or California. At some point his private jet will touch down at “headquarters,” but how

long he will stay is anybody's guess. Right now he is on free time from this lawsuit.

It would be unjust to make Plaintiff incur additional costs to track down Mr. Hogan when he is obviously either in hiding or indifferent to this lawsuit.

This Court should keep in mind that Plaintiff is not suing for some outrageous tort, or punitive damages, or RICO, or a class action, or demanding some outrageous multi-million dollar recovery. Plaintiff is only asking for his own money back. Plaintiff gave \$550,000 to Hogan through the false promises of an attorney who has been sanctioned by the SEC for taking undisclosed kickbacks from EB-5 regional centers, and now some years have passed and Plaintiff wants his \$550,000 back because he realizes that he will likely die before getting repaid or achieving US temporary residence. Plaintiff's lawyers are working on contingency and not taking the standard 1/3 of recovery, nor even 1/5, or even 1/8: the maximum we will recover is 1/10th, split among all the people helping the Plaintiff. This is not some greedy plot to suck blood from Hogan and CMB: it is a simple suit to help an elderly Chinese man get his own money back before he dies.

When the shoe was on the other foot -- i.e., when Hogan wanted the Plaintiff's money -- Hogan sent people to China, sent brochures to Chinese potential investors, sent out letters saying that now would be a good time to invest in this particular fund, and basically did everything to make himself and CMB available. But now that a single investor wants to get back 1/900th of an investment fund -- that is, **to get back his own money** -- Hogan is hiding behind a maze of companies and a phalanx of lawyers.

MEMORANDUM

Federal courts have allowed service by publication combined with service by certified mail in situations when a defendant is consciously evading service of process. The legal path for this is as follows: F.R.C.P. 4(e)(1) allows for service of process on individuals pursuant to state law, and while Illinois law generally mandates personal service by hand delivery or service at a defendant's abode (per 735 ILCS 5/2-203), there is an Illinois statute that allows courts to design alternative service when the standard methods are impractical:

Sec. 2-203.1. Service by special order of court. If service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-203, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order service to be made in any manner consistent with due process.

Nesbitt v. Regas, 2015 WL 1331291 at *5, 6 (N.D. Ill. March 20, 2015). In *Nesbitt*, the defendant was accused of banking fraud and racketeering, her lawyer would not accept service, and the process servers could not find her at home. So the court fashioned an alternative remedy consisting of service by publication plus mailing the summons and complaint to the defendant's home and to her parents' home.

This was consistent with the Illinois statute set forth above, 735 ILCS 5/2-203.1.

The Illinois courts “do not favor those who seek to evade service of summons.” *In Re Marriage of Schmitt*, 747 N.E.2d 524 553 (Ill. App. 2nd Dist. 2001)(allowing service of divorce papers on a husband’s employee in a situation where a husband was evading service at his home), *quoting Edward Hines Lumber Co. v. Smith*, 172 N.E.2d 429 (Ill. 1961)(allowing service by tying the summons to a doorknob when a defendant wrongfully instructed the family not to accept service for him).

In *Fifth Third Bank v. Malone*, 2010 WL 183344 (N.D. Ill Jan. 20, 2010), the Northern District allowed service on an evasive defendant by certified mail and by delivering a copy of the papers to the attorney representing the defendant in a *different* case in the same District, under the reasoning that the attorney would likely have contact with the defendant and would have reason to alert her to the summons and complaint in the separate, new lawsuit. The Court said that F.R.C.P. 4(e) favors traditional methods of service, but there are cases where alternative service must be fashioned by a court:

Here, Rule 4(e) authorizes service through any manner permitted by the law of the state where the district court sits, and the cases cited above demonstrate that Illinois law permits service on the defendant's current attorney as a last resort, when the customary and preferred methods have proven “impractical” despite the plaintiff's diligent efforts to use those standard methods, as is the case here.

Id. at *4.

An alternative remedy is appropriate in this case because Plaintiff’s situation is even worse than in the cases cited above. In those cases, at least the plaintiff had

some home address as a starting point. Plaintiff doesn't even have that. Hogan has assiduously avoided any public listing of his residence, and it cannot be determined from the county records or the election board records or the corporate listings with the Secretary of State. A search of county property records shows that he is part owner of the 7819 42nd Street West building, but this is owned through an LLC with his relatives (NorKev LLC), and does not show his home address.

As explained in the attached affidavit, the process server could not locate him through a skip trace. Online searches did not reveal any home addresses, only vague possible previous addresses in East Moline, Moline, or Milan, Illinois. His attorneys refuse to give his location, even though they filed an appearance for CMB Export LLC, for which (according to the Illinois Secretary of State) Hogan is the sole manager.

As for NK, it is impossible to determine if there are any employees or agents of the firm, and no one will step forward. The Illinois Secretary of State lists Patrick and Joan Hogan as managers, but again, we have no way of knowing where they live, or even if the company still exists.

The Defendants caused this blindness and confusion. They are creating, shifting, dissolving, and moving their business entities like some kind of proliferating vegetation in a science fiction movie. This case cannot go forward – indeed, it cannot get past the service phase – unless the defendants come clean and explain to the Court and to the Plaintiff the exact nature of their company structure. It is not too much of an inconvenience to ask a billion dollar company to provide

names and addresses of all relevant parties as opposed to letting Plaintiff wander through a maze, which by intention or recklessness makes service of process impractical.

An affidavit is attached pursuant to 735 ILCS 5/2-203.1.

WHEREFORE, Plaintiff asks for (i) an Order authorizing service by publication on defendants NK Immigration Services LLC and Mr. Patrick Hogan, and (ii) an Order directing the defendant CMB Export LLC to prepare a coherent and logical map of corporate ownership, location, and affiliation – and, if possible, to present this map in open court to the Judge and the Plaintiff.

Respectfully submitted,

/s/ Doug Litowitz

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Attachments

Exhibit 1: CMB Export LLC public records

Exhibit 2: CMB Illinois Regional Centers LLC public records

Exhibit 3: NK Immigration Services LLC public records

Exhibit 4: Unpublished Opinions Cited

Certificate of Service

I certify that on the 6th day of August, I electronically filed this Motion for Service by Publication and Motion to Explain Corporate Structure with the Clerk of the Court using the CM/ECF system.

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