

WCTC v. Dalton, 12 ROP 204 (Tr. Div. 2005)
WESTERN CAROLINE TRADING CO.,
Plaintiff,

v.

MARGIE B. DALTON,
Defendant.

BECHESSERRAK TMILCHOL,
Plaintiff,

v.

MARGIE B. DALTON,
Defendant.

CIVIL ACTION NOS. 05-067 & 05-068

Supreme Court, Trial Division
Republic of Palau

Decided: April 27, 2005

LARRY W. MILLER, Associate Justice:

These cases are before the Court on motions for entry of default and default judgment.¹ The Court has delayed ruling on these motions because it questions the validity of the service of process in both of these cases. In particular, in both cases, the proof of **L205** service signed by plaintiffs' process server recites that service was effected by delivering the summons and complaint

to Flor Hernandez, who is an adult residing or employed at defendant's dwelling house or usual place of abode or business and who is an adult and of sound mind and discretion and who is working at defendant's usual place of abode or business as a waitress.

Rule 4(e) of the "new"² Rules of Civil Procedure provides that service of a summons and complaint may be effected "by leaving copies [of the summons and complaint] at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein . . ." It does not provide for service on an employee (or co-worker) of that individual at his or her place of business. Thus, to the extent that the boilerplate language of plaintiffs' proofs of service includes in the disjunctive the possibility that service was effected at

¹In Civil Action No. 05-068, default has already been entered by the Clerk of Courts.

² The "new" rules have been in effect for almost three years now.

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defendant's place of business, it raises the concomitant question of whether service was proper.

Notwithstanding the foregoing observations, the Court has today signed the proposed default judgments for two reasons. First, the close proximity of defendant's former residence and place of business and of the living quarters for her employees make it possible that service on Ms. Hernandez was proper notwithstanding her position as a waitress. Second, and especially given this ambiguity, the Court does not wish to multiply the costs of these proceedings (including contractual attorney's fees) in circumstances where defendant herself might choose not to. The Court has accordingly entered the judgments, as it has said, leaving it open to defendant to move to vacate them as she sees fit.³

³In any event, plaintiffs' counsel should educate his process server on the requirements of the revised rule and/or modify the form of his proof of service, as may be appropriate in accordance with the above discussion.