

Judge Rejects 'Unorthodox' Plea to Permit Service by Facebook

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A federal judge has rejected using Facebook as an alternative method of serving process on a party in a lawsuit who has been hard to find.

Southern District Judge John Keenan ([See Profile](#)) told Chase Bank it could not use the social media website to track down and

serve a woman with a history of providing fake or out-of-date addresses and who allegedly obtained a credit card in her mother's name and then made numerous purchases.

Instead, Keenan authorized service in [Fortunato v. Chase Bank USA](#), 11 Civ. 6608, to Nicole Fortunato by publication in four local newspapers to cover four areas where Fortunato had listed addresses and a fifth area listed on her Facebook page as her current location.

Chase Bank secured a default judgment in New York Supreme Court in 2009 against Nicole's mother, Lorri Fortunato, for \$1,243 in unpaid credit card bills and recovered the money by garnishing her wages.

Lorri Fortunato then brought claims against the bank for violation of the Fair Credit Reporting Act, abuse of process and conversion, claiming that another person fraudulently opened up an account using her name.

In November 2011, Keenan gave Chase leave to implead Nicole Fortunato for contribution, indemnification, breach of contract, account stated, fraud and unjust enrichment.

The bank hired an investigator who was unable to locate Nicole or an address where she might live. It then asked the judge to authorize service of process by e-mail, Facebook message, publication and delivery to Lorri.

Under N.Y. CPLR 308, service of process may be effected by (1) personal service; (2) delivery to "a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served; (3) service on an agent; or (4) so-called "nail and mail service," nailing service to a person's door and then mailing them a copy.

Section 308(5) allows a court to direct another method of service where service by these means is "impracticable."

After being unable to locate Nicole at addresses she had given in the New York localities of Shandaken, Patterson, Wingdale and Newburgh, the investigator found what she believed to be Nicole's Facebook profile that included her personal e-mail address and listed her location as Hastings, N.Y.

Keenan was satisfied that service by normal means was impracticable, but he could not agree that service by private Facebook message, e-mail to the address listed on her Facebook profile and a third alternative, delivery of the summons and complaint to Lorri, were reasonably calculated to notify Nicole.

"Service by Facebook is unorthodox to say the least, and this court is unaware of any other court that has authorized such service," Keenan said. "Furthermore, in those cases where service by email has been judicially approved, the movant supplied the Court with facts indicating that the person to be served would be likely to receive the summons and complaint at the given email address."

He said Chase had set forth no facts that would "give the Court a degree of certainty that the Facebook profile its investigator located is in fact maintained by Nicole or that the email address listed on the Facebook profile is operational and accessed by Nicole."

"Indeed, the Court's understanding is that anyone can make a Facebook profile using real, fake or incomplete information, and thus, there is no way for the Court to confirm whether the Nicole Fortunato the investigator found is in fact the third-party Defendant to be served."

The judge said he was "similarly skeptical" of effecting service on Lorri Fortunato.

"By all accounts, Lorri and Nicole are estranged (unsurprising in light of the fact that Nicole allegedly stole her mother's identity), Lorri has not been in touch with her daughter for years, and Lorri does not have any recent contact information for her daughter."

Moreover, he said, such service is not appropriate given that Lorri and Nicole "are essentially counter parties in this suit."

Gregory Gorski, Mark Mailman and John Soumilas of Francis & Mailman in Philadelphia and Brian Bromberg of Manhattan represent Lorri Fortunato.

Soumilas in an interview faulted Chase for garnishing his client's wages even though she presented proof of her identity and maintained accounts at the bank in good standing.

"We wish they had taken that level of care in determining who the proper debtor is—they continue to hold her garnished funds," he said. "It's very ironic they are so diligent about trying to track down the daughter now, but seemed to be not at all diligent in determining who they should have sued in the first place."

Thomas Stagg and Brian Lacroff of Stagg, Terenzi, Confusione & Wabnik in Garden City represent Chase. Stagg did not return a call for comment.

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