IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
APPELLATE DIVISION

AUSTIN & LAURATO, P.A.,

Appellant,

v.

SUSAN DeMICHELLE d/b/a DeMICHELLE REPORTERS OF NORTHERN CA,

Appellee.
_____/

Appellate Case No. 10-24210

Lower Tribunal
Case No. 09-CC-23761

APPELLEE'S ANSWER BRIEF

BRIAN F. STAYTON, ESQ.
Florida Bar No. 169943
DARYL E. DYKEMAN, ESQ.
Of Counsel
Florida Bar No. 64797
STAYTON LAW GROUP, P.A.
Bloomingdale Oaks Executive Park
1462 Bloomingdale Ave.
Valrico, FL 33596
Telephone: (813) 662-9829
Facsimile: (813) 662-9830
Attorneys for Appellee

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II. TABLE OF AUTHORITIES

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III. TABLE OF ABBREVIATIONS AND DESIGNATIONS.

The record will be cited as follows: "R.[v]:[p]" referring to the volume and page number assigned by the Clerk of the Record on Appeal. For multi-page citations, the ending page is provided after a dash: "R.[v]:[p]-[p]." For quotations from the trial transcript, start and finish line numbers will be added after a semicolon and separated with a dash: "T.[v]:[p];[l]-[l]."

The Parties will be referred to in this Brief as follows:

- Appellant: Austin & Laurato.
- Appellee: DeMichelle Reporters.
- Michael V. Laurato: Laurato, although not a party to this appeal, is the Florida attorney and a member of Austin & Laurato.
- Susan DeMichelle: DeMichelle is the principal of her business, DeMichelle Reporters of Northern CA.

IV. STATEMENT OF CASE AND FACTS

In July 2007, the law firm of Austin & Laurato, P.A., contacted DeMichelle Reporters. Austin & Laurato sought DeMichelle Reporters' services as a court reporter in California for the deposition of a California corporate representative for litigation in Hillsborough County. The deposition occurred in August 2007, with Laurato appearing by telephone. R.1.17-18. At the conclusion of the deposition, Laurato requested the transcription of the deposition. R.1.24. The deposition was transcribed, a copy was sent by email to Laurato, and the hard copy was sent by DeMichelle Reporters to Austin & Laurato on C.O.D. terms. R.1.26. Delivery was refused.

Rather than pay for the services, John Franco wrote a letter on Austin & Laurato stationery and offered $250.00. R.1.28. In the letter, John Franco represented that he was the "Administrator" for Austin & Laurato. That offer was refused.

DeMichelle thereafter filed suit in Small Claims Court in California seeking payment for the court reporting. On March 19, 2008 Raul Pages, of Prestige Legal Services, served Austin & Laurato by delivering the summons and Petition to John Franco at the offices of Austin & Laurato, P.A., 1902 West Cass Street, Tampa, FL 33606. R.1.33. According to the Affidavit of Service, at the time of the service

John Franco, the office administrator for Austin & Laurato, acknowledged that he was authorized to accept service for both Laurato and Austin & Laurato, P.A. John Franco has electronically filed the annual reports for the Law Firm for the years 2009 and 2010. T.1.60-61. John Franco is a registered agent for one other corporation within the State of Florida. T.1.48. Austin & Laurato did not respond to the summons from the California Court. A Default Judgment was entered on May 20, 2008 (the "California Judgment"). T.1.35. The California Judgment was properly domesticated and recorded in Hillsborough County on March 3, 2009. R.1.9.

Rather than pay the invoice or the judgment, Laurato and Austin & Laurato on August 5, 2009 filed a declaratory judgment action in Hillsborough County, contending that Austin & Laurato had been inaccurately identified in the California judgment and that service of the California suit had been defective upon both defendants. R.1.4-9. On or about June 14, 2010, per motion, the names used in the California judgment were amended. R.1.74-78. The amended style was recorded in both the original domestication action in Hillsborough County and this declaratory judgment action.

A hearing was held before The Honorable Eric R. Myers on October 25, 2010. Following motions for directed verdict, the Court pronounced its oral

findings of fact and conclusions of law and directed counsel for DeMichelle Reporters to prepare a corresponding judgment. T.1.107-117. The "Judgment Following Final Hearing" was entered on November 18, 2010. R.1.83-84. Judge Myers found and ruled:

> **FINDINGS OF FACT**
>
> 1. Based upon the stipulation of counsel, service was never properly obtained in the underlying California case upon Michael V. Laurato, Esq.
>
> 2. Mr. John Franco had the actual, apparent or implied authority to accept service of process upon Austin & Laurato, P.A., for the underlying California case.
>
> 3. Despite the argued ambiguity in the style of the California case, the amendment of the style of the California case was not a substantive change. The firm Austin & Laurato, P.A., had notice of the California case, and therefore the amendment was proper.
>
> **CONCLUSIONS OF LAW**
>
> 1. As to Mr. Laurato personally, the domesticated judgment is null and void.
>
> 2. Service of process for the underlying California judgment was proper on Austin & Laurato, P.A.
>
> 3. The firm Austin & Laurato, P.A., is properly named in the domesticated California judgment.

R.1.84.

On appeal, Austin & Laurato continue to press the same arguments that were heard and rejected by Judge Myers. This Court should again reject the arguments

of Austin & Laurato. Service was proper and, even if Austin & Laurato was not precisely identified by the correct name, that defect has been cured by an amendment to the case style in California.

V. SUMMARY OF ARGUMENTS

(1) Service was properly made upon Austin & Laurato by hand-delivering the California summons to John Franco, who had previously and subsequently represented that he was the "Administrator" of Austin & Laurato. Argument directed at the nomenclature of "Michael Laurato Esq. d/b/a Austin & Laurato P A" ignores the substance of the lawsuit and the findings of Judge Myers. The contradictory statements made by Austin & Laurato's witnesses left Judge Myers with no clear and convincing evidence to find that service was defective.

(2) The California court's amendment of the name of the underlying judgment, from "Michael Laurato Esq. d/b/a Austin & Laurato P A" to "Michael Laurato and Austin & Laurato, P.A." was not a substantive change requiring additional service.

(3) Judge Myers did not commit error in modifying the underlying domesticated judgment to ""Michael Laurato and Austin & Laurato, P.A."

VI. STANDARD OF REVIEW.

On appeal the decision of Judge Myers comes with a presumption of correctness for which the Appellant must rebut. A presumption of correctness is accorded to the decision of the trial court. *First Atlantic National Bank of Daytona Beach v. Cobbett,* 82 So. 870 (Fla. 1955)*; Bilgore v. Gunn,* 9 So.2d 184 (Fla. 1942) (the ruling of the trial court is favored); *Dei v. Harper,* 475 So.2d 912 (Fla. 2nd DCA 1985) (trial court's decision comes clothed with a presumption of correctness); *Sainer Constructors, Inc. v. Pasco County School Bd.,* 349 So.2d 1212 (Fla. 2nd DCA 1977). The findings of fact and conclusions of law are reviewed with a presumption of correctness and must remain undisturbed unless clearly erroneous. *Chiles v. State Employees Attorneys Guild,* 734 So.2d 1030 (Fla. 1999), *rehearing denied; Chicken 'N' Things v. Murray,* 329 So.2d 302 (Fla. 1976); *Bowen v. Everett,* 205 So.2d 536 (Fla. 2nd DCA 1967); *Bass v. Bass,* 188 So.2d 346 (Fla 2nd DCA 1966). Appellate courts are not to substitute their judgment for that of the trial court. *Delgado v. Strong,* 360 So.2d 73 (Fla 1978); *Prevatt v. Prevatt* 462 So.2d 604 (Fla. 2nd DCA 1985) (appeal court cannot substitute its judgment of the facts and reweigh the evidence).

If the return is regular on its face, then the service of process is presumed to be valid and the party challenging service has the burden of overcoming that

presumption by clear and convincing evidence. *Re-Employment Services, Ltd. v. National Loan Acquisitions Co.*, 969 So.2d 467 (Fla. 5th DCA 2007); *Melchi Dev. Group, Inc. v. Berky Dev. Group, L.L.C.,* 918 So.2d 407 (Fla. 5th DCA 2006); *Telf Corp. v. Gomez,* 671 So.2d 818 (Fla. 3rd DCA 1996). When there is an error or omission in the return of service, personal jurisdiction is suspended and it "lies dormant" until proper proof of valid service is submitted. *Klosenski v. Flaherty,* 116 So.2d 767, 769 (Fla. 1959); *Schneiderman v. Cantor,* 546 So.2d 51 (Fla. 4th DCA 1989); *Tetley v. Lett,* 462 So.2d 1126, 1127 (Fla. 4th DCA 1984).

With the decision of the trial court being presumed to be correct, it is incumbent on the Appellant to prove reversible error. Additionally, the resolution of factual issues presented to Judge Myers must be resolved in a manner that supports the Court's ruling. Here, the Appellant has failed to meet that burden.

VII. POINT I: SERVICE ON AUSTIN & LAURATO WAS PROPER.

Austin & Laurato, despite being put on notice and being properly served, are attempting to void a valid foreign judgment through the use of selective reading, semantics and misnomers.

A. Hand-Delivering the California Summons to John Franco, the "Administrator" of Austin & Laurato, Constitutes Valid Service.

The law of the state rendering the judgment governs the issues of the judgment's validity. *Whipple v. JSZ Financial Co., Inc.*, 885 So.2d 933, 937 (Fla. 4th DCA 2004). Accordingly, California law governs the issues surrounding the validity of the service upon Austin & Laurato.

Although not at all surprising, given the apparent fact that neither counsel in this appeal are admitted to practice in California, counsel for Austin & Laurato have missed the applicable California rules for service. The plain reading of the applicable statutes governing small claim actions and substituted service show that leaving a copy of the California summons and complaint with John Franco constituted valid service.

Pursuant to California law, three particular sections of the California Code of Civil Procedure are at issue:

- California Code of Civil Procedure Section 416.10, relied upon by Appellant, provides that service may be made upon a corporation by delivering a copy of the summons and complaint to the registered agent or to the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process. Section 416.10, however, is not the exclusive means under California law for effecting service.
- California Code of Civil Procedure Section 415.20 provides for substitute service in lieu of the personal service set forth in Section 415.10. Substitute service is made by, "leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." California Code of Civil Procedure,

Section 415.20(a). Paragraph (a) of Section 415.20 is applicable "in lieu of personal delivery" as specified in Section 416.10 for corporations. Paragraph (b) of the same section applies to defendants other than corporations (Section 416.60 for minors; Section 416.70 for guardians; Section 416.80 for election disputes; and Section 416.90 is a catch-all section for all other persons).

- Last, California Code of Civil Procedure Section 116.340, which specifies service methods for Small Claims matters, reduces the technicalities of service for small claim cases in California:

> (a) Service of the claim and order on the defendant may be made by any one of the following methods:
>
> (1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.
>
> (2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.
>
> (3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

> (4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

Since the DeMichelle Reporters' California complaint sought less than $500, service was clearly governed by the more lenient Section 116.340 provision of California Civil Procedure Rules. Under that Section, mere mailing with a return receipt constitutes adequate service. Further, without even attempting personal service, substituted service per Section 415.20 is permitted. And, under Section 415.20, substitute service is valid if the summons and complaint are left during usual office hours at a person's business address with, "the person who is apparently in charge thereof." (The California Clerk also mailed a copy. T.1.74.

California case law is actually quite lenient concerning valid service. *See, Hearn v. Howard*, 177 Cal.App.4th 1193, 99 Cal.Rptr.3d 642 (2009). Statutes governing substitute service shall be, "liberally construed to effectuate service and uphold jurisdiction if actual notice has been received by the defendant." *Ellard v. Conway*, 94 Cal.App.4th 540, 544, 114 Cal.Rptr.2d 399 (2001). *See also, Espindola v. Nunez*, 199 Cal.App.3d 1389, 245 Cal.Rptr. 596 (1988):

> We are guided, however, by the explanation of legislative intent in *Pasadena MediCenter Associates v. Superior Court* (1973) 9 Cal.3d 773, 108 Cal.Rptr. 828, 511 P.2d 1180: "Although some decisions under pre-1969 statutes required strict and exact compliance with the statutory

> requirements (see 2 Witkin, Cal.Procedure (2d ed. 1970)pp. 1390, 1413-1415), the provisions of the new law, according to its draftsmen, 'are to be liberally construed' .... As stated in the Nov. 25, 1968, Report of the Judicial Council's Special Committee on Jurisdiction, pp. 14-15: "**The provisions of this chapter should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant, and in the last analysis the question of service should be resolved by considering each situation from a practical standpoint**..." The liberal construction rule, it is anticipated, will eliminate unnecessary, time-consuming, and costly disputes over legal technicalities, without prejudicing the right of defendants to proper notice of court proceedings.' (Li, Attorney's Guide to Cal.Jurisdiction and Process (Cont.Ed.Bar 1970) pp. 57-58.)" (**!d.,** at p. 778, 108 Cal.Rptr. 828, 511 P.2d 1180.)

199 Cal.App.3d at 1391, 245 Cal.Rptr. at 598 (emphasis added).

In *Hearn v. Howard, supra*, after personal service was not made, substituted service was not even made at the defendant's business address; instead, the summons and complaint had been left with a mail store clerk for a rented post office box. The *Hearn* Court stated:

> Our reliance on *Ellard* is not affected by the fact that the mail store clerk served here may not have been a manager and declined to confirm or deny whether appellant rented a post office box at that location. As aptly stated in *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1393, 8 Cal.Rptr.2d 351, "a 'defendant will not be permitted to defeat service by rendering physical service impossible.' [Citation.] 'The evident purpose of Code of Civil Procedure section

> 415.20 is to permit service to be completed upon a good faith attempt at physical service on a responsible person ....' [Citation.] Service must be made upon a person whose 'relationship with the person to be served makes it more likely than not that they will deliver process to the named party.' [Citation.]" The purpose of section 415.20 was achieved by service on the clerk at the post office box store where appellant rented a post office box.

177 Cal.App.4th at 1202-03, 99 Cal.Rptr.3d at 651. The Hearn Court ruled that the substitute service upon a mail clerk of another business was valid -- a far cry from leaving the summons and complaint at Austin & Laurato, at the law firm's business address, with the employee who had previously tried to negotiate the same invoice that formed the basis of the California case as the firm's "Administrator."

Appellant also wrongly relies upon *Renoir v. Redstar Corporation*, 123 Cal.App.4th 1145, 20 Cal.Rptr.3d 603 (2004). *Renoir* involved a French judgment. The *Renoir* court explained that California law requires an entirely new suit, rather than domestication of a sister-state judgment:

> Foreign nation money judgments are enforced by bringing an action in California to obtain a domestic judgment. *See 164 East 72nd Street Corp. v. Ismay*, 65 Cal.App.2d 574, 151 P.2d 29 (1944)." (11 Cal. Law Revision Com. Rep., supra, at p. 472; reprinted at 19A West's Ann. Code Civ. Proc. (1982) foil. § 1717.3, p. 704.) By expressly providing that foreign money judgments could not be enforced in the same way as sister state judgments, the Legislature intended that

> foreign money judgments be enforced with "all the normal trappings of an original action" that had existed before in connection with the enforcement of sister state judgments. (11 Cal. Law Revision Com. Rep., supra, p. 457; see 8 Witkin, Cal. Procedure (4th ed. 1997) Enforcement of Judgment, § 431, pp. 434-435; McKnight, Enforcement of a Foreign Money Judgment in California, 1 Cal. International Practitioner (1989-1990) No. 2, pp. 1, 2 ["Unlike enforcement of a domestic judgment, a party enforces an FMJ [foreign monetary judgment] in California by filing an action here, by which-if all requirements are met-the FMJ is essentially converted into a domestic judgment"]; Hamilton v. Superior Court (1974) 37 Cal.App.3d 418, 423, 112 Cal.Rptr. 450.)

123 Cal.App.4th 1151-52, 20 Cal.Rptr.3d at 607-8. Since an entirely new suit was required, it hardly should be surprising that the new suit in *Renoir* required its own valid service.

If a return of service is regular on its face then it is presumed to be valid and the party challenging service has the burden of overcoming the presumption by clear and convincing evidence. *Re-Employment Services, Ltd. v. Nat'l Loan Acquisitions Co.*, 969 So. 2d 467, 471 (Fla. DCA 5th 2007). In the present case, service was made upon John Franco who acknowledged to the process server he was "authorized to accept" service (as shown by the "ata" notation on the return affidavit) for all of the defendants in the California action. R.1.33.

Even under Florida law, the argument by Austin & Laurato that Franco was

not an officer or director of the Law Firm and therefore service was defective can be contrasted to the facts in *Bank of America, N.A. v. Bornstein*, 39 So.2d 500 (Fla. DCA 4th 2010). There, a writ of garnishment had been served on a bank teller. Bank of America moved to quash the writ of garnishment, arguing that service upon a teller was not valid service. The Fourth Circuit agreed:

> The bank teller did not meet the definition of a business agent. "[A] business agent as contemplated by the law means more than one appointed for a limited or particular purpose. It has reference to one having general authority to act for the corporation within the state. Its duties must be closely related to the duties of the officers of the corporation." *See Int'l Steel Truss Co. v. Artec Group, Inc.*, 824 So. 2d 340, 342 (Fla. 2d DCA 2002) (quoting *Valdosta Milling Co. v. Garretson*, 54 So. 2d 196, 197 (Fla. 1951)). "For purposes of service of process, a business agent has been held to be the person who represents the corporation and who officially speaks for it in the local business affairs of the corporation." *Se. Mail Transport*, 402 So. 2d at 524.

39 So.2d at 504.

Compare the role of Mr. John Franco, the office administrator of Austin & Laurato (T.1.40;4), with that of the bank teller in *Bornstein*. Not only was Mr. Franco the self-professed firm administrator, he also electronically signed the annual reports for Austin & Laurato. T.1.60-61. He had also personally made the offer of $250 to DeMichelle Reporters on the disputed invoice prior to suit. T.1.54. *See also, Ram Coating Technology Corp. v. Courtaulds Coatings, Inc.*, 625 So.2d

97, 98 (Fla. 1st DCA 1993) ("The record reflects that process was served upon him, and while Roth contests this fact, the trial court obviously concluded otherwise").

When John Franco sent DeMichelle Reporters a letter on behalf of Austin & Laurato (T.1.54), attempting to negotiate the amount due on the subject invoice, it is clear that he was authorized to act as the business agent of Austin & Laurato. In *International Steel Truss Co. v. Artec Group, Inc.*, 824 So.2d 340 (Fla. 2nd DCA 2002), the court provided the general overview of such authority:

> [A]s Justice Terrell wrote when interpreting a materially similar provision in 1951, "[a] business agent as contemplated by the law means more than one appointed for a limited or particular purpose. It has reference to one having general authority to act for the corporation within the state. Its duties must be closely related to the duties of the officers of the corporation." Valdosta Milling Co. v. Garretson, 54 So.2d 196, 197 (Fla.1951) (referring to § 47.17(4), Fla. Stat. (1941)).

824 So.2d at 342. Clearly one who has the general authority, real express or implied, to negotiate invoices on behalf of Austin & Laurato also possesses the corporate authority to accept service upon the same firm, for the same debt.

B. The Misnomer in the Original California Judgment Does Not Render Service Void.

The misnomer of "dba Austin & Laurato, P.A." versus "Austin & Laurato, P.A.," does not render the California Judgment void.

Under Florida law, if a person is sued and process is served upon him by a wrong name, he is not thereby deprived of his right to appear and defend the action; neither is he required to appear by a name not his own; but it is his right and his duty to appear by his correct name. *Sexton v. Panning Lumber Co.*, 260 So. 2d 898, 900 (Fla. DCA 4th 1972), *quoting Stewart v. Preston*, 86 So. 348 (Fla. 1920). Austin & Laurato is asking this court to void a valid judgment, not on a technicality, but upon their chosen reading of the name not used in the complaint.

In relation to misnomers the Florida Supreme Court has said:

> Now the objective of all pleadings is merely to provide a method of setting out the opposing contentions of the parties. No longer are we concerned with the 'tricks and technicalities of the trade.' The trial of a lawsuit should be a sincere effort to arrive at the truth. It is no longer a game of maneuver captures the prize.

Sexton, id., quoting Cabot v. Clearwater Construction Co., 89 So.2d 662 (Fla. 1956).

Even if the misnomer did not precisely pinpoint Austin & Laurato, that perceived error was validly corrected by DeMichelle in California, according to California Rules. R.1.74-78. *See also, Arnwine v. Huntington National Bank, N.A.*, 818 So.2d 621 (Fla. 2nd DCA 2002) ("Thus, relation back will usually apply when the new party 'knew or should have known that the plaintiff had made a mistake or was guilty of a misnomer as concerns the correct identity of the defendant so that

the added party was deemed to have suffered no prejudice by being tardily brought in or substituted as a party.' *Kozich*, 702 So.2d at 1291 (*quoting Michelin Reifenwerke, A.G. v. Roose*, 462 So.2d 54, 57 (Fla. 4th DCA 1984). Here, it is clear that Huntington knew or should have known that Arnwine had made a mistake. ... While Huntington is correct that 'Huntington Bank of Lakeland' did not exist, Huntington cannot seriously claim that it was misled or prejudiced by this misnomer given its merger with Peoples Bank.")

Austin & Laurato, despite vigorous arguments that it does not have an officially recognized fictitious name, does not deny receipt, knowledge, or awareness of the California case. Nor does Austin & Laurato even dispute the debt owed to DeMichelle Reporters. The arguments are not valid based on either Florida or California law.

C. Contradictory Statements by Austin & Laurato's Witnesses Left No Clear and Convincing Evidence to Support the Denial of Effective Service.

At the hearing, both John Franco and the registered agent Cesar R. Romero testified that they were the "Administrator" of Austin & Laurato. Neither appeared aware that the other witness claimed the same job descriptions.

Cesar Romero testified:

> Q: Was Mr. Franco the administrator for the firm?
>
> A: From my point of view, he's never been an

administrator for the firm.

T.1.31;14-16.

John Franco, to the contrary, affirmatively testified that he was the administrator:

A: I'm the firm administrator for Austin & Laurato.

[T.1.40;4.]

Q: What was your – then what was your position with the firm in March of 2009?

A: The administrator.

T.1.41;6-8. In fact, according to John Franco, he was in a management position with Austin & Laurato:

Q: As the firm administrator, was that a management position of any sort?

A: Yes.

T.1.41;9-11.

Both Cesar Romero and John Franco also claimed that they wrote the checks for Austin & Laurato. Romero testified that he paid the bills by writing all of the checks by hand. T.1.78. Romero also testified that check writing was done without a computer. T.1.79. Franco, on the other hand, testified that he prepared the firm's checks using the VersaChecks software program. T.1.51.

Both employees testified that they were the firm administrator, with both

denying the other's claimed title. Both employees also testified that they wrote checks to vendors for the firm, one by hand and one using a computer. Clearly, the obfuscation had reached a new level.

Judge Myers was uniquely situated to rule that no clear and convincing evidence was brought to the Court to deny service of the California summons and complaint.

VIII. POINT II: THE AMENDMENT BY THE CALIFORNIA COURT DID NOT EFFECT A SUBSTANTIVE CHANGE REQUIRING NEW SERVICE.

Austin & Laurato contend that the California court's amendment of the case caption from "Michael Laurato Esq. d/b/a Austin & Laurato P A" to "Michael Laurato and Austin & Laurato, P.A." constitutes a substantive change that requires, per California law, for new service of the amended complaint. Austin & Laurato is incorrect.

The substance of the California judgment was an obligation of Austin & Laurato to pay for the court reporter services performed at Laurato's request. Whether or not that obligation is owed by "Michael Laurato Esq. d/b/a Austin & Laurato P A" or "Michael Laurato and Austin & Laurato, P.A." does not change the substance of the obligation. The debt is the substance, whether it is owed by "Michael Laurato Esq."; the firm he practices under, "Austin & Laurato P A"; or his name without the esquire, "Michael Laurato"; or the correctly-titled name of his firm, "Austin & Laurato, P.A."

As explained in *Engebretson & Co. v. Harrison*, 125 Cal.App.3d 436, 178 Cal.Rptr. 77 (1982), California rules do NOT require service of an amended complaint if the change was to "mere form":

> "It has been repeatedly held that a defaulting defendant is entitled to be served by an amended complaint **when the amendment is as to a matter of substance and not a mere matter of form**. The reason for this rule is plain. A defendant is entitled to opportunity to be heard upon the allegations of the complaint on which judgment is sought against him." (Thompson v. Cook (1942) 20 Cal.2d 564, 568, 127 P.2d 909. See also, Ford v. Superior Court (1973) 34 Cal.App.3d 338, 342-343, 109 Cal.Rptr. 844; Taliaferro v. Taliaferro (1963) 217 Cal.App.2d 216, 219, 31 Cal.Rptr. 774.) **An amendment which significantly increases the amount of damages sought is an amendment of substance which must be served before a default can be entered.** (See Leo v. Dunlap (1968) 260 Cal.App.2d 24, 27-28, 60 Cal.Rptr. 888.)

In *Engebretson*, the original complaint sought damages, "in excess of $5,000," while the amended complaint (and resulting default judgment) stated damages of $60,067.61. The California Court held that an amended complaint which changed the relief sought by plaintiff constituted a substantive amendment that therefore required service. That's a substantive change.

In contrast, changing nothing but the style of the case from, "Michael Laurato Esq. d/b/a Austin & Laurato P A" to a more technically correct, "Michael Laurato and Austin & Laurato, P.A." is not a substantive change. The obligation, the amount claimed, the potential liability -- DeMichelle Reporters and the California Small Claims Court changed none of those. Removing "Esq. d/b/a" and substituting instead the word "and" and two periods is nothing but form.

IX. POINT III: JUDGE MYERS PROPERLY AMENDED THE DOMESTICATED JUDGMENT TO REFLECT THE CALIFORNIA COURT'S AMENDMENT OF ITS CASE STYLE.

According to the U.S. Constitution, foreign judgments of sister states are to be given full faith and credit by courts in every jurisdiction. See, Art. IV, § 1, U.S. Const. When the California Court amended the underlying California judgment, as explained in the previous section, Judge Myers was bound to do the same in Hillsborough County. Any other result is ignoring the clear requirements of law.

Judge Myers ruled that the name change made to the California Judgment was not a substantive change, since the amount of the default judgment had not changed. T.1.116. There is nothing in the record, in California law, or in Florida law that suggests any other result.

XII. CERTIFICATE OF SERVICE.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following:

Ardyn V. Cuchel, Esq.
LAW OFFICE OF ARDYN V. CUCHEL, P.A.
1902 West Cass Street
Tampa, FL 33606

on this the 7TH day of JULY, 2011.

Brian F. Stayton, Esq.

XIII. CERTIFICATE OF COMPLIANCE.

I certify that this brief complies with the type-volume limitation set forth in Florida Rule of Appellate Procedure 9.210.

Brian F. Stayton, Esq.