

Judge: Paul B. Snyder
Location: Tacoma
Chapter: 15
Date of Hearing: 2/28/06
Response Date: 2/24/06

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9 UNITED STATES BANKRUPTCY COURT
10 WESTERN DISTRICT OF WASHINGTON

11 In re:

12 Petition of HO SEOK LEE as Court-Appointed
13 Manager of YOUNG CHANG CO. LTD,
14 Debtor in Foreign Bankruptcy.

No. 06-40043

MOTION TO ALLOW SERVICE OF
SAMSUNG MFG. CO. LTD. VIA
REGISTERED MAIL

15 Ho Seok Lee on behalf of Young Chang Co. Ltd. ("Young Chang") moves this court
16 for an order allowing service on Korean corporation Samsung. Co., Ltd. ("Samsung") via
17 registered mail.

18 **I. Statement of Facts**

19 In this proceeding ancillary to a foreign bankruptcy, Mr. Lee, the foreign
20 representative of Young Chang, seeks relief against Samsung.

21 On January 20, 2005, this court filed a certificate of service on Samsung. On January
22 25, 2006, this court ordered Mr. Lee to serve a copy of its Petition and Application for
23

1 recognition of a foreign proceeding on Stuart Dunwoody, counsel for Samsung located in
2 Seattle, and on Samsung.

3 On January 27, Young Chang served copies of those documents on Mr. Dunwoody.
4 Declaration of Jason T. Dennett in Support of Motion to Allow Service on Samsung via
5 Registered Mail (“Dennett Decl.”) at ¶ 2. Petitioner asked Mr. Dunwoody on February 1
6 whether he could accept service on behalf of Samsung. Dennett Decl. at ¶ 4. Mr. Dunwoody
7 replied on February 2, 2006 that he was without authority to do so. Dennett Decl. at ¶ 5.

8 Young Chang mailed Samsung copies of its Chapter 15 Petition and the Application
9 for Recognition of Foreign Proceeding, and supporting declarations to Samsung via the
10 Korean Postal Office. The return receipt states that Korean Postal Office employee Seung
11 Gun Baik delivered the documents to Samsung employee Soon Mun Kwon at Samsung’s
12 Korean offices on February 7, 2006¹. Declaration of Michael Yi in Support of Motion to
13 Allow Service on Samsung via Registered Mail (“Yi Decl.”) at ¶ 5 and Ex. 1. Further, on
14 February 1, Petitioner sent those documents to Samsung in Korea via registered mail, return
15 receipt requested. Dennett Decl. at ¶ 3.

16 Back Lee, an employee of Samick Music Corp. (a US subsidiary of Samsung)
17 informed Michael Yi, acting president of A N D Music Corp. (a subsidiary of Young Chang)
18 of this court’s January 25, 2006 Order before Mr. Yi received his copy from counsel. Yi
19 Decl. at ¶ 3. This, in addition to the receipt of mailing on Samsung in Korea, suggests that
20 Samsung has actual notice of the bankruptcy proceeding.

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22 ¹ Korean citizens were on national holiday for the New Year celebration between January 26
23 and February 6, so the Petition and Application were delivered to Samsung as soon as possible after
the court’s January 25 order. Yi Decl. at ¶ 4.

1 The Republic of Korea's court system does not have the equivalent of personal
2 service in the US. Yi Decl. at ¶ 4. All court documents are delivered to litigants by the
3 courts. *Id.*; Korea Code of Civil Procedure 255.

4 II. Evidence Relied Upon

5 1. Declaration of Jason T. Dennett in Support of Motion to Allow Service on
6 Samson via Registered Mail.

7 2. Declaration of Michael Yi in Support of Motion to Allow Service on Samson
8 via Registered Mail.

9 3. Declaration of Rick Hamilton.

10 III. Legal Authority and Argument

11 Bankruptcy Rule 1010, Service of Involuntary Petition and Summons, as amended by
12 U.S. Order 05-42 provides for service of a Chapter 15 petition on those parties against whom
13 the foreign representative will seek relief.

14 On the filing of an involuntary petition or a petition for recognition of a
15 foreign nonmain proceeding the clerk shall forthwith issue a summons for
16 service. When an involuntary petition is filed, service shall be made on the
17 debtor. When a petition for recognition of a foreign nonmain proceeding is
18 filed, service shall be made on the debtor, any entity against whom
19 provisional relief is sought under § 1519 of the Code, and on any other
20 parties as the court may direct. The summons shall be served with a copy
21 of the petition in the manner provided for service of a summons and
22 complaint by Rule 7004(a) or (b). If service cannot be so made, the court
23 may order that the summons and petition be served by mailing copies to
the party's last known address, and by at least one publication in a manner
and form directed by the court. The summons and petition may be served
on the party anywhere. Rule 7004(e) and Rule 4(l) F.R.Civ.P. apply when
service is made or attempted under this rule².

² Unlike prior Rule 1010, which addressed service for all ancillary proceedings, the rule as amended provides only for foreign non-main proceedings.

1 Rule 7004(a) provides "Rule 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P.
2 applies in adversary proceedings." Rule 7004(b) applies only to service within the United
3 States. Therefore F.R.Civ.P. 4(f) and (h) provide the manner in which Young Chang should
4 serve its petition.

5 Rule 4(h) provides:

6 Service Upon Corporations and Associations. Unless otherwise provided
7 by federal law, service upon a domestic or foreign corporation or upon a
8 partnership or other unincorporated association that is subject to suit under
9 a common name, and from which a waiver of service has not been
10 obtained and filed, shall be effected: . . . (2) in a place not within any
11 judicial district of the United States in any manner prescribed for
12 individuals by subdivision (f) except personal delivery as provided in
13 paragraph (2)(C)(i) thereof.

14 We then look to Rule 4(f) for the correct method of service. It provides:

15 (f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by
16 federal law, service upon an individual from whom a waiver has not been obtained
17 and filed, other than an infant or an incompetent person, may be effected in a place
18 not within any judicial district of the United States:

19 (1) by any internationally agreed means reasonably calculated to give notice,
20 such as those means authorized by the Hague Convention on the Service
21 Abroad of Judicial and Extrajudicial Documents; or

22 (2) if there is no internationally agreed means of service or the applicable
23 international agreement allows other means of service, provided that service is
reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for
service in that country in an action in any of its courts of general
jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory
or letter of request; or

...

(3) by other means not prohibited by international agreement as may be
directed by the court.

1 The Republic of Korea, where Samsung's headquarters is located, signed the 10
2 February 1965 Hague Convention on the Service Abroad of Judicial and Extra-Judicial
3 Documents in Civil or Commercial Matters (the "1965 Hague Treaty"), which provides that
4 the members will follow a set of rules regarding service in cross-border litigation. U.S.T.
5 1361, Article 1; 658 U.N.T.S. 163, T.I.A.S. No. 6638. However, Korea, objected to the
6 provisions of the the 1965 Hague Treaty that allow personal service or service by mail.
7 According to the US Department of State website³:

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9 Pursuant to Article 10, the Republic of Korea objects to the following: a)
10 the freedom to send judicial documents, by postal channels, directly to
11 persons abroad, b) the freedom of judicial officers, officials or other
12 competent persons of the State of origin to effect service of judicial
13 documents directly through the judicial officials or other competent
14 persons of the State of destination, c) the freedom of any person interested
15 in a judicial proceeding to effect service of judicial documents directly
16 through judicial officers, officials or other competent persons of the State
17 of destination.

18 Since Korea objected to personal service and service by mail, the only remaining
19 option under treaty is service through consular channels, via letters rogatory, as provided in
20 Articles 8 and 9 of the 1965 Hague Treaty. Article 5 requires translation of any documents
21 served.

22 The process for service through consular channels cannot be completed before the
23 March 2, 2006 hearing. Process Forwarding International anticipates that service on
Samsung through consular channels would take between 4 and 6 months to complete.
Declaration of Rick Hamilton ("Hamilton Decl.") at ¶ 4.

³ http://travel.state.gov/law/info/judicial/judicial_680.html

1 Service through consular channels will also be unnecessarily expensive where
2 Samsung has actual notice of the Chapter 15 proceeding. Process Forwarding International
3 charges \$350 plus approximately \$80 per page to translate documents into Korean. Hamilton
4 Decl. at ¶¶ 2-3. For the over 40 pages of text⁴ that petitioner must serve, it will cost
5 approximately \$3,700.

6 Because service of the petition and application cannot be served prior to the hearing,
7 Bankruptcy Rule 1010 provides for alternate means. At least one court in the US has
8 approved of the use of other methods of service where, as here, petitioners do not anticipate
9 attempting to enforce any judgment of this court in Korea. The Supreme Court of Appeals of
10 West Virginia stated that letters rogatory is not the only proper means of service in Korea,
11 where, as here, enforcement of a US judgment in Korea is not sought. "After looking into the
12 mechanisms for effecting service on Korean Nationals, the district court determined that,
13 while service via letters rogatory was necessary it enforcement of a U.S. judgment would be
14 sought, other means of service were nonetheless proper." *Korzun v. Yi*, 207 W.Va. 377, 378
15 n.4, 532 S.E.2d 646 (W.Va, 2000).

16 As stated above, Samsung has actual notice of the pending hearing. To avoid waste of
17 time and money, petitioner requests an order that service on Samsung by registered mail was
18 sufficient.

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23 ⁴ Excluding those exhibits that are already in Korean.

1 Dated: February 10, 2006

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4 s/ Jason T. Dennett
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7 Fax: (206) 621-1151
E-mail: jason@carlsonlaw.com
8 Attorneys for Petitioner Ho Seok Lee

9 **CERTIFICATE OF SERVICE**

10 I, Nadine Morin, declare as follows:

11 1. I am a citizen of the United States and a resident of the state of Washington,
12 over the age of 18 years, not a party to the above-entitled action, and am competent to be a
13 witness herein.

14 2. On February 10, 2006, I caused to be served on

15 Stuart R. Dunwoody Davis Wright Tremaine LLP 2600 Century Square 16 1501 Fourth Avenue Seattle, WA 98101-1688 17 <i>Via legal messenger</i>	15 Lance N. Jurich, Esq. Leob & Leob LLP 10100 Santa Monica Blvd., Suite 2200 16 Los Angeles, CA 90067-4164 17 <i>Via Federal Express</i>
19 U.S. Trustee 700 Stewart Street, Suite 5103 20 Seattle, WA 98101 21 <i>Via legal messenger</i>	19 Samsung Mfg. Co. 419-6 Chungchun-dong Bupyung-ku 20 Incheon, Republic of Korea 403-718 21 <i>Via Registered Mail</i>

22 the following documents:
23

- 1 a. Motion to Allow Service of Samsung Mfg. Co. Ltd. via Registered
Mail;
- 2 b. Declaration of Jason T. Dennett in Support of Motion to Allow Service
by Registered Mail;
- 3 c. Declaration of Michael Yi in Support of Motion to Allow Services by
Registered Mail;
- 4 d. Declaration of Rick Hamilton; and
- 5 e. Proposed Order Allowing Service on Samsung Mfg. Co. via Registered
Mail.

6 I declare under penalty of perjury of perjury under the laws of the State of
7 Washington that the foregoing is true and correct.

8 Dated: February 10, 2006

9 s/ Nadine Morin