

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**  
*JUDGE*

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801-3733  
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February 18, 2010

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1426 North Clayton Street  
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**Re: Savimex Corporation  
v. Acorn USA Holdings, LLC, et al.  
C.A. No. 09C-05-067 JAP**

Dear Ms. Castro:

In light of your letter of January 19, 2010 the Court will enter a default judgment against Acorn USA Holdings, LLC and PGM Products, LLC. However, it will not enter a default judgment against Eileen Haneiko because she has not been properly served.

The Court understands Plaintiff to contend that service can be made upon defendant Haneiko under 10 *Del.C.* §3114 by serving the registered agent of defendant PGM because she is a director of that corporation. It is true that in certain instances section 3114 authorizes service on a corporate director by service on the corporation's registered agent. But those instances are limited to claims based upon acts performed by the defendant in his or

her capacity of officer or director. In *Ryan v. Gilford*<sup>1</sup> Court of Chancery examined in depth the language of section 3114, the cases interpreting that section and the statute's constitutional limitations. The court concluded that section 3114 "is limited to actions against a director only for acts performed in his capacity as a director."<sup>2</sup> This Court agrees with that conclusion.

In the instant case the claims against defendant Haneiko are based upon her personal guarantee of payment to Plaintiff. Although she was an officer at the time she made this guarantee, the guarantee of payment is not an act performed in her capacity as a director. Rather, in placing her personal assets at risk by making the guarantee Ms. Haneiko acted in her personal capacity. The Court therefore finds that service upon Ms. Haneiko is insufficient.

Rule 4(j) of this Court requires that service must be made upon defendants within 120 days. This case was filed on May 7, 2009, yet more than nine months later there has been no service on defendants Huntington Tile Group, David Adams and Eileen Haneiko. The Court previously directed Plaintiff to show cause why the claims against these defendants should not be dismissed. Plaintiff responded by merely stating that the process servers "have attempted diligently to perfect service on these Defendants." The Court concludes that this is not a showing of "good cause why such service was not made within [the 120 day] period" as required by Rule 4(j). Accordingly

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<sup>1</sup> 935 A.2d 258 (Del.Ch.2007).

<sup>2</sup> Id at 268.

the action against defendants Huntington Tile Group. David Adams and Eileen Haneiko is **DISMISSED WITHOUT PREJUDICE**.

Plaintiff shall submit a proposed judgment order against defendants Acorn USA Holdings and PGM Products on or before March 5, 2010.

**SO ORDERED.**

Very truly yours,

John A. Parkins, Jr.

cc: Prothonotary