UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

MARIA DOLORES CANTO MARTI, as personal representative of the Estates of Dolores Marti Mercade and Fernando Canto Bory,

Plaintiff,

CASE NO. 20-20078-CIV-SCOLA

v.

IBEROSTAR HOTELES Y APARTAMENTOS S.L., a Spanish limited liability company,

Defendant.
_____/

STATUS REPORT ON SERVICE OF PROCESS

Plaintiff, Maria Dolores Canto Marti ("**Plaintiff**"), by and through her undersigned counsel and pursuant to the Court's February 11, 2020 Order [D.E. 7] directing Plaintiff to file a status report regarding her efforts to effect service upon Defendant Iberostar Hoteles y Apartamentos S.L. ("**Defendant**") by April 7, 2020, hereby demonstrates that service has been effectuated on Defendant and submits as follows:

1. On January 8, 2020, Plaintiff filed this action.

2. On January 9, 2020, the Clerk of the Court issued its Summons.

3. On January 21, 2020, pursuant to Rule 4(f)(1) of the Federal Rules of Civil Procedure, Plaintiff, through local counsel in Spain, sent a copy of the Complaint [D.E. 1] and Summons [D.E. 3] to Defendant by Burofax, the Spanish postal service, in accordance with the

Hague Convention.[1] Article 10 of the Hague Convention states in relevant part that "… the present Convention shall not interfere with – a) the freedom to send judicial documents, by postal channels, directly to persons abroad …". A copy of the Burofax receipt is attached herein as **Exhibit A**. However, such delivery was refused by Defendant.

4. Thereafter, on February 13, 2020, pursuant to Rules 4(f)(1) and 4(f)(2)(C)(i) of the Federal Rules of Civil Procedure, Plaintiff, through local counsel in Spain, personally delivered a copy of the Complaint and Summons to Defendants via Spanish Civil-Law Notary Public. For ease of reading, an uncertified copy of the Spanish public notary deed titled "Acta de Notificacion y Requerimiento," which is translated in English as "Notarial Certificate of Request and Notice," is attached herein as **Exhibit B** (the "**Notarial Certificate of Request and Notice**"). The certified translation of the same is included at the end of Exhibit B. The apostilled and certified copy, which is stapled and sealed and therefore more difficult to photocopy in a fully legible fashion is in the possession of counsel for the Plaintiff. A photocopy of the apostilled and certified copy of the Notarial Certificate of Request and Notice is attached hereto as **Exhibit C**.

5. Service was thereby effectuated on Defendant on January 21, 2020 and February 13, 2020 pursuant to both Rules 4(f)(1) and 4(f)(2)(C)(i) of the Federal Rules of Civil Procedure. Indeed, the Complaint and Summons were served on Defendant through delivery by Spanish Civil-Law Notary Public pursuant to Rule 4(f)(1) of the Federal Rules of Civil Procedure, which provides that service on a foreign corporation may be effectuated in accordance with the Hague Convention as follows:

> … the present Convention shall not interfere with – …

[1] The "**Hague Convention**" refers to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163"); the full text of the Hague Convention has also been reprinted in the United States Code Service (U.S.C.S.) on International Agreements at 265-310.

> b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
> c) the freedom of any person interested din a judicial proceeding to effect service of judicial documents directly though the judicial officers, officials or other competent persons of the State of destination.

And in addition, the Complaint and Summons were served personally on Defendant by the Spanish Civil-Law Notary Public pursuant to Rule 4(f)(2)(C)(i) of the Federal Rules of Civil Procedure, which provides that a foreign corporation may be served by "delivering a copy of the summons and of the complaint to the individual personally."

6. The Notarial Certificate of Request and Notice states in relevant part as follows:

> On Thursday, February 13, 2020, at 4:30 p.m., I, Civil-Law Notary Public, have appeared at the aforementioned office of IBEROSTAR HOTELES, located at calle General Riera n. 154, Palma de Mallorca. At the access check point, I was directed to a reception desk where I informed the receptionist that I was a Civil-Law Notary Public. I explained to her that the reason of my visit was to serve a notice and request in the Legal Department of "Iberostar Hoteles y Apartamentos, S.L.", and she replied that she had express orders not to receive any notice. ***I told her that as provided for by section 203 of Notorial Regulations, refusal of reception of a notice is considered as duly served***, and she insisted on the fact that those were the instructions she had received.

Certified translation of the Notorial Certificate of Request and Notice, Exhibit B at 2-3.

7. Therefore, the Notorial Certificate of Request and Notice confirms that service was effectuated by the Notary-Public's personal delivery to Defendant despite the receptionist's refusal to accept the delivery because according to Spanish Law (specifically section 203 of Notorial Regulations), notice of the Complaint and Summons is still considered duly served despite such refusal.

8. The Notorial Certificate of Request and Notice attached herein as Exhibit B serves as proof of service pursuant to Rule 4(l)(2)(B) of the Federal Rules of Civil Procedure providing

that service outside of the U.S. may be proved by "evidence satisfying the court that the summons and complaint were delivered to the addressee."

9. Thereafter, on March 19, 2020, in an abundance of caution and to ensure that Defendant received service of the Complaint and Summons, Plaintiff delivered a copy of the same to Defendant by DHL pursuant to Rule 4(f)(2)(C)(ii) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(f)(2)(C)(ii) (providing that a foreign corporation may be served by "delivering a copy of the summons and of the complaint to the individual personally."); *See also Leon v. Cont'l AG*, 176 F. Supp. 3d 1315 (S.D. Fla. 2016) (Court concluding that under the Hague Convention, U.S. legal documents may be served by direct mail, specifically via international express mail and fedex provided that plaintiffs "file a copy of the fedex proof of signature by addressee, or by other evidence satisfying the court that summons and complaint were delivered to the address.").

10. Proof of delivery confirming that the Complaint and Summons was delivered by DHL and signed for by Defendant on March 19, 2020 is herein attached as **Exhibit D** and serves as proof of service in accordance with Rule 4(l)(2)(B) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(l)(2)(B) (providing that proof of service may be in the form of "a receipt signed by the addressee.").

11. Therefore, pursuant to the Summons, Defendant's answer is due at the latest on April 10, 2020. Undersigned counsel notes that he has been contacted by a local lawyer and law firm on behalf of Defendant, who has requested more time to respond to the Complaint on behalf of Defendant, but who has not yet made an appearance in these proceedings.

DATED this 7th day of April 2020.

Respectfully submitted,

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