SUMMARY
June 18, 2025

2025COA60

No. 24CA1175, *Sebastian Holdings, Inc. v. Johansson* — Civil Procedure — Process — Substituted Service — Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters — Hague Service Convention

A division of the court of appeals considers as a matter of first impression whether the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 (the Hague Service Convention), permits a Colorado court to authorize substituted service of foreign process within the state. The division holds that Article 19 of the Hague Service Convention allows for service of process in Colorado through any method authorized by Colorado law, including through substituted service as provided by C.R.C.P. 4(f). The division also holds that personal jurisdiction over a defendant in a foreign action is not required before a Colorado court

may authorize substituted service of process. And because the plaintiffs exercised due diligence to effectuate personal service on the defendant, and the requested substituted service was reasonably calculated to give actual notice of the foreign action, the division affirms the district court's refusal to quash substituted service in this case.

COLORADO COURT OF APPEALS **2025COA60**

Court of Appeals No. 24CA1175
Pitkin County District Court No. 23CV30062
Honorable John F. Neiley, Judge

Sebastian Holdings, Inc. (acting by Shane Crooks and Malcolm Cohen as joint receivers), Shane Crooks, and Malcolm Cohen,

Plaintiffs-Appellees,

v.

Per Johansson,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE KUHN
Welling and Schutz, JJ., concur

Announced June 18, 2025

Holland & Knight LLP, Leah E. Capritta, Anna S. Day, Denver, Colorado; Holland & Knight LLP, Garrett S. Garfield, Portland, Oregon, for Plaintiffs-Appellees

Garfield & Hecht, P.C., Christopher D. Bryan, Macklin Henderson, Aspen, Colorado, for Defendant-Appellant

¶ 1 In this appeal of a district court's order authorizing substituted service of process, we consider whether the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 (the Hague Service Convention), prohibits a Colorado court from authorizing substituted service of process after a plaintiff in a foreign proceeding has attempted and failed to personally serve process on a defendant in Colorado. We hold that Article 19 of the Hague Service Convention allows for service of process in Colorado through any method authorized by Colorado law. Additionally, we conclude that personal jurisdiction over a defendant in a foreign action is not required before a Colorado court may authorize substituted service of process. Accordingly, we affirm the district court's determinations that, under C.R.C.P. 4(f), the plaintiffs exercised due diligence and the substituted service was reasonably calculated to give actual notice.

I. International Background

¶ 2 We glean this background from the record, including filings made in the Supreme Court of the Turks and Caicos Islands.

¶ 3 This long-running dispute spans the globe, stemming from a larger proceeding that began in 2009 when Deutsche Bank AG filed a claim in the High Court of Justice of England and Wales against Sebastian Holdings, Inc., a Turks and Caicos company, and a plaintiff in the matter before us. The High Court resolved that underlying dispute in 2013, dismissing Sebastian Holdings' approximately $8 billion counterclaim. The High Court also ordered Sebastian Holdings to pay Deutsche Bank over $243 million, plus interest. Deutsche Bank commenced collection actions and recovered over $62 million by executing on shares owned by Sebastian Holdings in a Norwegian company. Then, in 2021, the Turks and Caicos Supreme Court[1] appointed the other plaintiffs in the matter before us — Shane Crooks and Malcolm Cohen — as joint receivers of Sebastian Holdings to marshal its assets, including its unliquidated claims. Based on filings in that court, as

[1] The Supreme Court of the Turks and Caicos Islands is similar to the Colorado district courts, hearing serious civil and criminal cases and appeals from magistrate courts. The Court of Appeal of the Turks and Caicos Islands hears appeals from the supreme court. *See* Judiciary of the Turks & Caicos Is., *Structure of the Courts*, https://perma.cc/K7C2-7E7N.

of August 2022, Sebastian Holdings' outstanding judgment debt, including interest, stood at approximately $350 million.

¶ 4 The receivers then brought claims in Turks and Caicos against a group of defendants related to Sebastian Holdings, including the defendant in this matter, Per Johansson, and an individual named Alexander Vik.[2] In essence,[3] the receivers accused Vik and Johansson of, among other things, breaching or assisting in the breach of fiduciary duties by transferring assets out of Sebastian Holdings between 2009 and 2015, when they knew or should have known that the company was liable to Deutsche Bank and insolvent or bordering on insolvency.

¶ 5 We turn now to how this case arrived in Colorado.

II. The Colorado Case

¶ 6 The receivers first attempted to serve Johansson through Deborah John-Woodruffe and Ariel Misick, two attorneys who represented Johansson in a related Turks and Caicos proceeding

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[2] Vik is Sebastian Holdings' former sole shareholder and sole director and is not a party to this appeal.

[3] For a more detailed factual background, see the record of action in *Sebastian Holdings, Inc. v. Sarek Holdings, Ltd.*, No. CL-78/2022 in the Supreme Court of the Turks and Caicos Islands.

and who represented other Turks and Caicos defendants in the underlying proceeding.

¶ 7 John-Woodruffe and Misick informed the receivers that they could not accept service for Johansson, so, at the receivers' request, the Turks and Caicos court granted Sebastian Holdings leave to serve process on Johansson "at [a residential address in] Aspen, Colorado 81611, United States of America or elsewhere in the United States of America." Johansson had previously been personally served at this Aspen residence in a related proceeding in October 2019. The receivers hired a process server who attempted to serve Johansson at the Aspen residence six times. Over the course of those attempts, the process server learned that Johansson did not live at the residence; however, the couple living there indicated that they rented the property from Johansson, who they believed was then in Italy.

¶ 8 The process server also spoke with Anthony Smith, a friend or acquaintance of Johansson who was believed to be the property

manager of the Aspen residence.[4] Smith spoke to Johansson on the phone and then informed the process server that Johansson told him, "It's that lawsuit that's been going on forever, [j]ust ignore it."

¶ 9 None of the individuals the process server spoke to knew Johansson's current address. So the receivers continued to investigate. They uncovered numerous facts that they believed reflected ongoing connections between Johansson and the Aspen residence. They then filed suit in the Pitkin County District Court seeking permission for substituted service of process on Johansson. The district court authorized substituted service on Johannson by personally serving the process on Smith and Michael Hoffman, a local attorney and the registered agent for a company that appeared to own the Aspen residence. Additionally, the court ordered the mailing of the process to the Aspen residence, John-Woodruffe, and Misick.

[4] Subsequently, it was revealed that Smith was not the property manager and more akin to a contractor who worked on the property.

¶ 10 Months later, Johansson appeared through counsel, contested the service of process, and moved to quash the substituted service. The district court denied the motion, and this appeal followed.

III. Analysis

¶ 11 Johansson contends that the district court (1) lacked personal jurisdiction over him; (2) erred by authorizing substituted service on him;[5] and (3) failed to comply with C.R.C.P. (4)(f).[6] We address each issue in turn.

A. Personal Jurisdiction

¶ 12 Johansson argues that, because he is a nonresident defendant, the district court was required to have personal jurisdiction over him in order for the court to authorize substituted service of process. We disagree.

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[5] Johansson argues his first and second issues together, but because they require distinct analyses, we address them separately.

[6] At oral argument, the parties' counsel did not know the current status of the Turks and Caicos litigation. However, they agreed that regardless of that status, the Colorado court's order authorizing substituted service still affects Johansson, and both sides argued that this case is not moot. We agree.

1. General Law and Standard of Review

¶ 13 Under the Federal and Colorado Due Process Clauses, "[p]ersonal jurisdiction . . . is 'an essential element of the jurisdiction of a district . . . court,' without which the court is 'powerless to proceed to an adjudication.'" *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (quoting *Emps. Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937)). "Due process prohibits the exercise of personal jurisdiction over a nonresident unless the person has certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 22. Colorado's long-arm statute sets forth acts that, if performed in Colorado, submit a person to the jurisdiction of Colorado courts, including but not limited to transacting business, committing tortious acts, owning property, maintaining a matrimonial domicile, and entering into certain agreements. *See* § 13-1-124(1), C.R.S. 2024.

¶ 14 Personal service of process is the generally preferred method to serve process, *see* C.R.C.P. 4(e)-(g), but alternatives, such as substituted service under Rule 4(f), are available in some

circumstances. "Because substituted service is an alternative to personal service, a plaintiff must first attempt personal service before [asking] the court for an order for substituted service." *Willhite v. Rodriguez-Cera*, 2012 CO 29, ¶ 22.

¶ 15 Whether a court must have personal jurisdiction over a nonresident party to effectuate substituted service is a question of law. *See Synan v. Haya*, 15 P.3d 1117, 1120 (Colo. App. 2000). And "[w]e review questions of law de novo." *Premier Farm Credit, PCA v. W-Cattle, LLC*, 155 P.3d 504, 512 (Colo. App. 2006).

2. Personal Jurisdiction is Not Required to Authorize Substituted Service

¶ 16 As Johansson recognizes, personal jurisdiction and service of process are related but distinct concepts. *See United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473, 476 (Colo. App. 1992) ("Proper service of process alone does not confer personal jurisdiction, nor does the existence of personal jurisdiction obviate the need for proper service of process." (quoting 4 Robert M. Hardaway & Sheila K. Hyatt, *Colorado Practice Series: Civil Rules Annotated* 108 (2d ed. 1985))); *see also Archangel Diamond Corp. Liquidating Tr. v. OAO Lukoil*, 75 F. Supp. 3d 1343, 1360 (D. Colo.

2014) ("While service of process and personal jurisdiction both must be satisfied before a suit can proceed, they are [nonetheless] distinct concepts that require separate inquiries." (quoting *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1209 (10th Cir. 2000))) (alteration in original), *aff'd*, 812 F.3d 799 (10th Cir. 2016).

¶ 17 "Personal jurisdiction is the court's power to subject a particular defendant to the decisions of the court." *Rombough v. Mitchell*, 140 P.3d 202, 204 (Colo. App. 2006). And valid service of process upon a defendant is a prerequisite for the district court's personal jurisdiction. *See Ledroit L. v. Kim*, 2015 COA 114, ¶ 19 ("A court may not exercise personal jurisdiction over a defendant without valid service of process."). Put another way, the action of serving process on a defendant "is directed to the manner of notifying a defendant that a plaintiff seeks to have a court exercise personal jurisdiction over the defendant." *Buchanan*, 836 P.2d at 476. Service of process is a necessary step in the court's acquisition of personal jurisdiction over a defendant. *See Burton v. Colo. Access*, 2015 COA 111, ¶ 10 ("If a plaintiff fails to properly serve the defendant with a complaint, there is no personal jurisdiction over the defendant."), *aff'd*, 2018 CO 11. But after a

defendant has been served, they are still free to challenge the court's personal jurisdiction over them. *See* C.R.C.P. 12(b)(2).

¶ 18 Because personal service is one step in obtaining personal jurisdiction over a defendant, personal jurisdiction cannot be a prerequisite to service of process. As the district court aptly noted, that would put the cart before the horse.

¶ 19 And the receivers ably argue why requiring personal jurisdiction before authorizing substituted service in particular would be a problem. It could lead to a situation where a court couldn't authorize service because it didn't have personal jurisdiction, but it also couldn't acquire personal jurisdiction because it couldn't order sufficient service. *See generally Ledroit L.*, ¶ 19; *Burton*, ¶ 10.

¶ 20 Johansson asks us to disregard this well-settled framework due to the unique facts of his case — namely, that he is a nonresident defendant involved in a foreign proceeding and the receivers turned to the Colorado courts for the sole purpose of seeking an order authorizing substituted service on him. He asserts that without a personal jurisdiction requirement, a court could violate a defendant's due process rights by authorizing service

despite a defendant being unaware of the existence of the suit and having absolutely no contacts with a state authorizing substituted service. We're not persuaded.

¶ 21 As discussed more fully below in Part III.C, these due process concerns are already protected by the requirements for substituted service of process. *See Willhite*, ¶ 26 ("A due process guarantee is built [into] the concept of substituted service in Colorado. Before authorizing substituted service, a Colorado court must consider whether delivery of process to the substituted person 'is appropriate under the circumstances and reasonably calculated to give actual notice to the [defendant].'" (quoting C.R.C.P. 4(f))) (alteration in original). And to the extent Johansson argues a hypothetical scenario on different facts, that case is not before us. Therefore, we will not address it. *See McBride v. People*, 2022 CO 30, ¶ 45 (declining to address a hypothetical scenario not before the court).

¶ 22 Thus, we discern no error in the district court's determination that it did not need personal jurisdiction over Johansson before it could authorize substituted service of process.

B. The Hague Service Convention

¶ 23 We next turn to Johansson's argument that the Hague Service Convention does not allow a Colorado court to authorize substituted service of process. We again disagree.

1. Applicable Law and Standard of Review

¶ 24 "The Hague Service Convention is a multilateral treaty that was formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698 (1988). It addresses service of process in foreign countries. *Willhite*, ¶ 11; Hague Service Convention art. 1. The Convention applies when the laws of the forum state — here the Turks and Caicos Islands — "require the transmittal of documents abroad in order to effectuate service." *Willhite*, ¶ 11.

¶ 25 Both the United States and the United Kingdom of Great Britain and Northern Ireland[7] are signatories to the Convention, *see* Hague Service Convention, and the parties agree that the Convention applies to the international service of process

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[7] The Turks and Caicos Islands are a territory of the United Kingdom.

authorized by the Turks and Caicos Supreme Court. This case requires us to assess the interplay between the Hague Service Convention and the Colorado Rules of Civil Procedure. And in conducting that assessment, we recognize that the United States Supreme Court is the final authority on matters of federal constitutional law and the interpretation of international treaties, while the Colorado Supreme Court is the final authority on questions of Colorado law. *See Willhite*, ¶ 9.

¶ 26 When interpreting a treaty, our starting point is the text of the treaty and the context in which its words appear. *Schlunk*, 486 U.S. at 699. Other general rules of construction may be brought to bear on difficult or ambiguous passages. *Id.* at 700. Likewise, when interpreting our state's rules of civil procedure, we apply the principles of statutory construction and "give effect to the express language of the rule, considering the rule as a whole and giving consistent effect to all of its parts." *Willhite*, ¶ 9 (quoting *Garrigan v. Bowen*, 243 P.3d 231, 235 (Colo. 2010)).

¶ 27 We review de novo the district court's interpretation of the Hague Service Convention. *See In re Parental Responsibilities Concerning T.L.B.*, 2012 COA 8, ¶ 18. We also review de novo the

interpretation of the Colorado Rules of Civil Procedure.

Willhite, ¶ 9.

2. The District Court Correctly Applied Article 19 of the Hague Service Convention in Authorizing Substituted Service of Process

¶ 28 Johansson contends that the district court erred by failing to quash service because the receivers were not permitted to petition the Colorado district court for an order authorizing substituted service of process. In doing so, he argues that the Turks and Caicos order required personal service, that Article 19 of the Hague Service Convention does not allow a plaintiff to avail itself of local procedures,[8] and that, as a result, the receivers needed to return to

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[8] The receivers do not contest preservation of this issue; "[h]owever, an appellate court has an independent, affirmative duty to determine whether a claim is preserved." *People v. Tallent*, 2021 CO 68, ¶ 11. Our review of the record demonstrates that while Johansson did not directly raise the Article 19 argument below, he did present argument on the Convention itself and, regardless, the district court directly addressed Articles 10 and 19 in its order denying Johansson's motion to quash. Thus, the issue is preserved. *See Brown v. Am. Standard Ins. Co. of Wis.*, 2019 COA 11, ¶ 23 (concluding that because the district court had ruled on the issue raised in the appellate court, the issue was preserved for appeal); *Battle N., LLC v. Sensible Hous. Co.*, 2015 COA 83, ¶ 13 (concluding that an issue was properly preserved for appeal when, despite ambiguity in the request to the trial court, the trial court had ruled on the issue).

the Turks and Caicos court to request an order authorizing substituted service of process.

¶ 29 To start, the record refutes Johansson's claim that the Turks and Caicos Supreme Court required personal service. The court's order said, "The Plaintiffs have leave to serve the Amended Writ of Summons, the Amended Statement of Claim and any other document in the proceedings on the Third Defendant, Per Johansson, at [the Aspen residence], Colorado 81611, United States of America or elsewhere in the United States of America." The plain language of the order did not identify a specific method of service or prohibit substituted service. Instead, it broadly authorized "leave to serve" at the Aspen residence or anywhere in the United States.

¶ 30 It's true that the Turks and Caicos Islands Supreme Court Civil Rules Order 65, rule 4(1) provides that personal service is the default mode of service in that jurisdiction. But that rule also provides that if "it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document." Moreover, Order 11, rule 5(3)(a) provides that service of a writ abroad "need not be served personally on the person required to be

served so long as it is served on him in accordance with the law of the country in which service is effected." And regardless, Johansson presents no justification for his position that we should read the order as only authorizing personal service in Colorado. *See Frisco Lot 3 LLC v. Giberson Ltd. P'ship, LLLP*, 2024 COA 125, ¶ 95 n.15 (noting that we won't address unsupported arguments). Thus, we decline to interpret the order as containing such a limitation for purposes of our analysis.[9]

¶ 31 Next, the parties don't dispute that the Turks and Caicos order for the transmission of documents for service abroad triggered the Hague Service Convention. *See* Hague Service Convention art. 1 ("The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad."). The parties likewise

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[9] The parties provided us with a copy of an order from the Turks and Caicos court interpreting its previous service order. Johansson asked us to take judicial notice of that order, which we do. *See People v. Sa'ra*, 117 P.3d 51, 56 (Colo. App. 2004) ("A court may take judicial notice of the contents of court records in a related proceeding."); CRE 201. However, that order does not change our analysis. While it is the province of the Turks and Caicos court to decide the impact of service in Colorado on the case before it, our ultimate task is to determine whether service in this case complied with Colorado law and the Hague Service Convention.

don't challenge the Colorado district court's reliance on Article 10(b) of the Hague Service Convention, which provides that it does not interfere with "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."

¶ 32 However, the district court also relied on Article 19, which reads, "To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions." Hague Service Convention art. 19. The court interpreted this language as authorizing service through any other method permitted under Colorado law, including the substituted service in this case. Johansson's challenge is centered on this interpretation of Article 19, a matter of first impression in Colorado.

¶ 33 We begin our analysis with the text of the treaty. *See Schlunk*, 486 U.S. at 699. The plain and ordinary language of Article 19 allows for service of process through any method authorized by the law of the state in which service is being made. "Permit" means "to

make possible." Merriam-Webster Dictionary, https://perma.cc/7U8V-VCXD. Rule 4 controls what methods of service of process are permitted in Colorado. This rule provides a variety of "methods of transmission" within the state, including substituted service. *See* C.R.C.P. 4(f). And nothing in Rule 4 limits these permitted methods of transmission for service of process in a suit from a foreign nation.[10] *See id.* Thus, Article 19 permits any method of service provided by Colorado law for service of process within this state.

¶ 34 Additionally, our interpretation is in harmony with the conclusions reached by many of the federal courts and our sister states. *See DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 288 (3d Cir. 1981) (noting that the Hague Service Convention "allows service to be effected without utilizing the Central Authority as long as the nation receiving service has not objected to the method used"); *EOI Corp. v. Med. Mktg. Ltd.*, 172 F.R.D. 133, 136 (D.N.J. 1997) ("Article 19 provides for service by any means

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[10] Likewise, the Colorado Supreme Court has held that C.R.C.P. 4(f) may be used to effectuate service on a foreign national for a Colorado lawsuit when personal service would be to no avail under C.R.C.P. 4(e). *Willhite v. Rodriguez-Cera*, 2012 CO 29, ¶ 30.

envisioned by the internal laws of the [state] in which service is made."); *Eli Lilly & Co. v. Roussel Corp.*, 23 F. Supp. 2d 460, 470 (D.N.J. 1998) ("Article 19 permits service by any method of service permitted by the internal laws of the country in which service is being made."); *Banco Latino, S.A.C.A. v. Gomez Lopez*, 53 F. Supp. 2d 1273, 1279-80 (S.D. Fla. 1999) (holding that Article 19 permits service methods expressly provided for by another country and permits service methods that are not contrary to a country's laws even though the methods are not explicitly authorized by the other country); *ePlus Tech., Inc. v. Aboud*, 155 F. Supp. 2d 692, 699 (E.D. Va. 2001) ("Article 19 must be read, in accordance with its plain meaning, to authorize only those service methods that are explicitly sanctioned by the law of the receiving country."); *Fernandez v. Univan Leasing*, 790 N.Y.S.2d 155, 156 (App. Div. 2005) ("Article 19 of the Hague [Service] Convention permits service by any method permitted by the internal laws of the country in which service is being made."). *But see Humble v. Gill*, No. 1:08-cv-00166, 2009 WL 151668, at *2 (W.D. Ky. Jan. 22, 2009) (unpublished opinion) (holding that Article 19 applies only when the country receiving service explicitly provides for a service method for documents

coming from other countries); *GMA Accessories, Inc. v. BOP, LLC*, No. 07 Civ. 3219, 2009 WL 2856230, at *3 (S.D.N.Y. Aug. 28, 2009) (unpublished order) (agreeing with the holding in *Humble*); *In re J.P.L.*, 359 S.W.3d 695, 706 (Tex. App. 2011) ("We conclude Article 19 applies only when the internal law of the contracting state specifically provides for the service of documents coming from abroad.").

¶ 35 Lastly, this reading aligns with the purpose of the Hague Service Convention, which is to "simplify, standardize, and generally improve the process of serving documents abroad." *Water Splash, Inc. v. Menon*, 581 U.S. 271, 273 (2017) (citing Hague Service Convention pmbl.). This interpretation of Article 19 aligns international and domestic service, which simplifies and standardizes international service in Colorado.

¶ 36 Accordingly, we hold that Article 19 permits service of process through any method authorized by Colorado law, including substituted service of process under Rule 4(f). Thus, the Colorado district court was not required to send the receivers back to the Turks and Caicos Supreme Court for an order specifically designating a method of service. We therefore discern no error in

the district court's denial of Johansson's motion to quash on this basis.

C. Substituted Service of Process Under C.R.C.P. 4(f)

¶ 37 Johansson next contends that the district court erred by permitting substituted service because (1) the receivers failed to exercise due diligence to effectuate personal service on Johansson and (2) the substituted service was not reasonably calculated to give actual notice. We disagree.

1. Applicable Law and Standard of Review

¶ 38 "The law requires that personal service shall be had whenever it is obtainable." *Weber v. Williams*, 324 P.2d 365, 368 (Colo. 1958). But "sometimes it will be difficult, if not impossible, to obtain personal service on a defendant." *Minshall v. Johnston*, 2018 COA 44, ¶ 14. Under Rule 4(f), when a party "is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (g)," a party may move the court to order substituted service of process. In doing so,

> [t]he motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party

> wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effected. If the court is satisfied that due diligence has been used to attempt personal service . . . , that further attempts to obtain service . . . would be to no avail, and that the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective, [the court] shall:
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> . . . .
>
> (1) authorize delivery to be made to the person deemed appropriate for service . . . .

C.R.C.P. 4(f).

¶ 39 Additionally, "[s]ervice [of process] must be valid and complete under the Due Process Clause." *Willhite*, ¶ 25. "This requires 'notice reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

¶ 40 When, as here, substituted service was authorized based on an affidavit submitted to the district court, we accept as true only

the uncontested statements of the process server in that affidavit. *See Synan*, 15 P.3d at 1120. And because we are in the same position as the district court with respect to the submitted affidavits relevant to this appeal, we review them de novo. *See Feigin v. Digit. Interactive Assocs., Inc.*, 987 P.2d 876, 880 (Colo. App. 1999). Likewise, the ultimate issue of whether any particular method of service is constitutionally sufficient in a given case is a question of law that we review de novo. *Synan*, 15 P.3d at 1120.

2. The Receivers Exercised Due Diligence in their Service Attempts

¶ 41 Johansson argues that the receivers failed to use due diligence in attempting to obtain personal service on him. We disagree.

¶ 42 "Due diligence does not require that the plaintiffs actually succeed in serving the defendant or that the plaintiffs exhaust every possible option in attempting to do so." *Minshall*, ¶ 18. Rather, "'[d]ue diligence' is commonly understood as '[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.'" *Id.* (quoting *Owens v. Tergeson*, 2015 COA 164, ¶ 44).

¶ 43 The record shows that the receivers investigated Johansson and the Aspen property and found the following connections:

- The Aspen residence was owned by a Colorado limited liability company, Cascade Aspen, LLC.
- Cascade Aspen, LLC's registered agent was local attorney Hoffman.
- No publicly available records with the Pitkin County Clerk and Recorder or Tax Assessor disclosed the owner of Cascade Aspen, LLC.
- A mechanic's lien was executed by Ajax Pool and Spa Inc. in March 2017 and recorded with the Pitkin County Clerk. It indicated that Johansson owned Cascade Aspen, LLC and that he was the property owner of the Aspen residence.
- Database search reports indicated that Johansson and his wife's current address was the Aspen residence.
- Johansson and Cascade Aspen, LLC jointly owned a 2016 Land Rover, registered in Colorado under their names, with the Aspen residence listed as the registrants' address.

- The Land Rover vehicle registration was renewed in November 2023. Johansson and Cascade Aspen, LLC still jointly owned the vehicle and still reported the registrants' address as the Aspen residence.
- Johansson and his wife personally paid the property taxes for the Aspen residence in 2017 and 2020.

¶ 44 The receivers made the following efforts to serve process on Johansson:

- Through a process server, the receivers attempted personal service on the Aspen residence six times.
- During the sixth personal service attempt, the receivers learned the residence was occupied by tenants who believed Johansson was the owner of the residence.
- The process server contacted Smith, the purported property manager, who informed her that Johansson owned the residence, that he had spoken with Johansson about the service attempts, that Johansson had instructed him to ignore the service attempts, and that

Johansson was living in Italy.[11] Smith did not know Johansson's current address or what town he was in.

¶ 45 Johansson asserts that these investigations and attempts were not enough; he suggests that, after the receivers learned he did not live in the home, they should have made efforts to find and serve him at another location, rather than repeatedly trying to serve him at the same address.[12] He posits that the failure to hire an investigator to find his — still undisclosed — other residence demonstrates that the receivers "did not really try." Given this record, we disagree.

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[11] The process server also affirmed that Smith told her Johansson owned the Aspen residence. However, Johansson argued in a motion for reconsideration of the order denying his motion to quash, supported by an affidavit from Smith, that Smith never said Johansson owned the Aspen residence and that his statement about ignoring service was taken out of context. We need not decide between these dueling positions because there is other evidence in the record indicating substantial ties between Johannson and the Aspen residence. Indeed, Smith's affidavit doesn't say that he didn't talk to or perform work for Johansson, only that his exact statements were inaccurately reported. Additionally, the tenants of the Aspen home said that they rented the home from Johansson and that he owned the home.

[12] Notably, the affidavits reflect that the receivers learned it wasn't his residence on the sixth attempt. There is no indication of repeated attempts afterward.

¶ 46 At the time of the order granting substituted service, there was only one known address for Johansson, he had been served at that address before in a related case, and there were substantial connections between him and that address. Additionally, there is support in the record for the district court's factual finding that by the time it authorized service of process, "Johansson had notice of the [Turks and Caicos] litigation and was actively avoiding service of process."

¶ 47 Moreover, while the receivers may not have hired an investigator to search the entirety of Italy, they did conduct an investigation, which revealed that Johansson paid property taxes for the Aspen residence and jointly owned a vehicle with the company that owned the Aspen residence. And multiple people who were living at or who had worked on the residence believed that Johansson owned it.

¶ 48 The facts above clearly support the district court's determination that the receivers exercised due diligence. *See Minshall*, ¶ 19 (determining that there was overwhelming support for due diligence when the plaintiffs hired an investigator to find the defendant's address, made four service attempts at the believed

address, used a vehicle registration to determine another address, attempted to serve process at an old workplace, and attempted to contact the defendant through a work associate and a realtor); *Willhite*, ¶ 30 (finding substituted service on defendant's sister, who resided in state, was a valid alternative to personal service on defendant because he resided in Mexico, where personal service was unavailable, and service attempts at his last known in-state address had failed).

¶ 49 We perceive no error in the district court's determination that the plaintiffs exercised due diligence to locate and personally serve Johannson before seeking authority for substituted service.

3. The Substituted Service Was Reasonably Calculated to Give Actual Notice

¶ 50 Johansson also asserts that the substituted service on Smith and Hoffman was not reasonably calculated to give him actual notice.

¶ 51 Before authorizing substituted service, the court must find that "the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective." C.R.C.P.

4(f). The district court authorized substituted service on Smith, the contractor, and Hoffman, the registered agent for residence owner Cascade Aspen, LLC. It also ordered the receivers to mail the process to the Aspen residence, and to John-Woodruffe and Misick in Turks and Caicos.

¶ 52 Johansson argues that service on Smith was not proper because he was not the property manager; instead, he was merely Johansson's friend and a contractor who occasionally worked on the property. However, at the time the court authorized the substituted service, it was uncontested that Smith had contacted Johansson and told him about the service attempts. And while Johansson later disputed the context of the statements, Smith didn't dispute that he spoke with Johansson about the service attempts.

¶ 53 It's true that the parties dispute the depth of the connections between Johansson, Smith, and the Aspen residence at the time of the request for substituted service. But "[t]he court is not required to investigate the alleged facts. It may (indeed, it must because [it] is an ex parte proceeding) assume the truth of the facts alleged by the moving party." *Minshall*, ¶ 29. And after the motion to quash

was filed, the district court weighed the evidence before it and found that Smith was the property manager and that he had "direct contact with Johansson and could effectively communicate with him." While Smith challenged the context of the statements he made, he confirmed that he had a conversation with Johansson and that he "informed Johansson that someone was trying to serve documents on [Smith] related to a lawsuit against [Johansson]."

¶ 54 Regardless, the exact interpersonal relationship between these two individuals is not the focal point of our analysis. "Instead, the question is whether, when the district court authorized substituted service . . . , that service was 'reasonably calculated to give actual notice' to [the party upon whom service is to be effective] as required by Rule 4(f)." *Minshall*, ¶ 31 (quoting C.R.C.P. 4(f)).

¶ 55 We conclude that the district court's order of substituted service on Smith was reasonably calculated to give Johansson actual notice, especially since the record shows that Smith had spoken with Johansson on the phone about this very issue.

¶ 56 Additionally, the district court also required the receivers to serve Hoffman. Johansson argues that substituted service on Hoffman was not reasonably calculated to give him actual notice

because there are no facts indicating a relationship between Hoffman and him beyond Hoffman being the registered agent of a related company.

¶ 57 We agree that when determining if substituted service is reasonably calculated to give notice, "service on the registered agent of a corporation is [not] sufficient, by itself, to effectuate valid service on a 'co-owner' of a corporation." *Id.* at ¶ 24. But the ultimate question is whether, given the nature of the relationships between the parties, service on the company's registered agent is "reasonably calculated to give actual notice" to the defendant. *Id.* at ¶¶ 26-27.

¶ 58 The record in this case demonstrates more than an arm's length relationship between a registered agent and a shareholder. Hoffman, Cascade Aspen, LLC, the Aspen residence, and Johansson share multiple connections, including

- Cascade Aspen, LLC and Johansson jointly owning a vehicle registered at the Aspen residence;
- Johansson and his wife personally paying the Aspen residence's property taxes;

- the current tenants identifying Johansson as the owner of the Aspen residence; and
- public records showing Johansson as the owner of the property.

¶ 59 Given these connections, we are persuaded that the relationship between Hoffman, Cascade Aspen, LLC, and Johansson was sufficient to justify substituted service on Hoffman.

¶ 60 Lastly, as noted above, in addition to serving process directly on Smith and Hoffman, the district court also ordered that the receivers mail process to (1) Johansson at the Aspen residence; (2) John-Woodruffe; and (3) Misick. *See* C.R.C.P. 4(f)(2) (requiring substituted process to be "mailed to the address(es) of the party to be served by substituted service, as set forth in the motion, on or before the date of delivery"). The receivers mailed process to those people in compliance with this order and emailed copies of the documents to John-Woodruffe and Misick. It is undisputed that these actions collectively resulted in Johansson receiving actual notice of the proceeding.

¶ 61 Thus, we discern no error in the district court's finding that substituted service of process was reasonably calculated to give

actual notice to Johansson or the court's resulting denial of the motion to quash.

IV. Costs on Appeal

¶ 62 Both parties request their costs on appeal under C.A.R. 39(a). Because we affirm the order, we deny Johansson's request for appellate costs. However, the receivers are entitled to their costs on appeal. *See* C.A.R. 39(a)(2) ("[I]f a judgment is affirmed, costs are taxed against the appellant."). They may pursue those costs in the district court by filing an itemized and verified bill of costs within fourteen days after entry of the appellate mandate. *See* C.A.R. 39(c)(2).

V. Disposition

¶ 63 The district court's denial of the motion to quash is affirmed.

JUDGE WELLING and JUDGE SCHUTZ concur.