

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

MECKLENBURG COUNTY

SUPERIOR COURT DIVISION

08-CVS-9450

SPEEDWAY MOTORSPORTS
INTERNATIONAL, LTD.,

Plaintiff,

vs.

BRONWEN ENERGY TRADING, LTD.,
BRONWEN ENERGY TRADING UK,
LTD.,
DR. PATRICK DENYEFA NDIOMU,
BNP PARIBAS (SUISSE) SA,
BNP PARIBAS S.A.,
SWIFT AVIATION GROUP, INC.,
SWIFT AIR LLC,
SWIFT AVIATION GROUP, LLC, and
SWIFT TRANSPORTATION CO., INC.,

Defendants.

**ORDER DIRECTING SERVICE
BY PUBLICATION**

THIS MATTER is before the Court on the motion of defendant Swift Aviation Group, Inc. ("SAG"), for an order directing SAG to effect service of process of its Cross-Claims by publication upon Bronwen Energy Trading UK, Ltd. ("Bronwen UK") and Dr. Patrick Denyefa Ndiomu ("Dr. Ndiomu") pursuant to N.C. Gen. Stat. § 1A-1, Rule 4(j3)(3) and Rule 4(j1). Section 1A-1, Rule 4(j3)(3) of the North Carolina Rules of Civil Procedure permits a defendant to be served outside the United States by any "means not prohibited by international agreement as may be directed by the court." SAG is requesting that the Court direct it to serve Bronwen UK and Dr. Ndiomu with SAG's cross-claim by publication in newspapers of wide circulation in the United Kingdom and in Mecklenburg County, North Carolina.

After considering SAG's Motion for Order Directing Service by Publication; its Memorandum in Support of Its Motion for Order Directing Service by Publication; the Affidavit

of Bryan Madagan; the Certificate-Attestation of the Supreme Court of England and Wales, Foreign Process Section; and the Affidavit of Meredith J. McKee, the Court finds as follows:

1. Despite diligent efforts to effect service through traditional means, SAG has been unable to serve its Cross-Claim on Bronwen UK or Dr. Ndiomu.

2. Because Bronwen UK is a limited liability company organized in the United Kingdom, and because Bronwen UK and Dr. Ndiomu were last found in London, service of process by publication in a newspaper of wide circulation in the United Kingdom is reasonably calculated to notify Bronwen UK and Dr. Ndiomu of the cross-claims and to afford them an opportunity to present their objections.

3. In addition, Bronwen UK and Dr. Ndiomu are aware that this lawsuit is pending in Mecklenburg County, North Carolina, because the Plaintiff served each of them with a copy of the Complaint and Summons. Dr. Ndiomu, the principal of Bronwen UK, later contacted counsel for the Plaintiff to discuss this lawsuit and then provided the Plaintiff with relevant documents.

4. As a result, service of process by publication in a newspaper of wide circulation in Mecklenburg County, North Carolina, the county in which the action is pending, is reasonably calculated under the circumstances to notify Bronwen UK and Dr. Ndiomu of the cross-claims and to afford them an opportunity to present their objections.

It is therefore ORDERED, for good cause shown, that:

a. SAG shall effect service of process on Bronwen UK by publishing a notice of service of process by publication for three consecutive weeks in *The Times* and *The Charlotte Observer*, widely circulated newspapers in London, United Kingdom and Charlotte, North Carolina, respectively, in substantially the following form:

NOTICE OF SERVICE OF PROCESS
BY PUBLICATION

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-9450

SPEEDWAY MOTORSPORTS
INTERNATIONAL, LTD.,

Plaintiff,

vs.

BRONWEN ENERGY TRADING, LTD., ET. AL,

Defendants.

TO: BRONWEN ENERGY TRADING UK, LTD.

TAKE NOTICE THAT a pleading seeking relief against you has been filed in the above-entitled action. The nature of the relief being sought is as follows:

CROSS-CLAIMS OF DEFENDANT SWIFT AVIATION GROUP, INC. AGAINST YOU FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING AND FRAUD AND CONVERSION.

You are required to make defense to such pleading not later than _____, _____ [40 days after the date of first publication of the notice] and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This the ____ day of _____, 2009.

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

James P. Cooney, III
Debbie W. Harden
Meredith J. McKee
One Wachovia Center, Suite 3500
301 South College Street
Charlotte, NC 28202-6037
Attorneys for Defendant Swift Aviation Group, Inc.

b. SAG shall effect service of process on Dr. Ndiomu by publishing a notice of service of process by publication for three consecutive weeks in *The Times* and *The Charlotte Observer*, widely circulated newspapers in London, United Kingdom and Charlotte, North Carolina, respectively, in substantially the following form:

NOTICE OF SERVICE OF PROCESS
BY PUBLICATION

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY
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SPEEDWAY MOTORSPORTS
INTERNATIONAL, LTD.,

Plaintiff,

vs.

BRONWEN ENERGY TRADING, LTD., ET. AL,

Defendants.

TO: DR. PATRICK DENYEFA NDIOMU

TAKE NOTICE THAT a pleading seeking relief against you has been filed in the above-entitled action. The nature of the relief being sought is as follows:

CROSS-CLAIMS OF DEFENDANT SWIFT AVIATION GROUP, INC. AGAINST YOU FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING AND FRAUD AND CONVERSION.

You are required to make defense to such pleading not later than _____, _____ [40 days after the date of first publication of the notice] and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

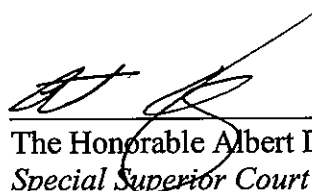
This the ____ day of _____, 2009.

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

James P. Cooney, III
Debbie W. Harden
Meredith J. McKee
One Wachovia Center, Suite 3500
301 South College Street
Charlotte, NC 28202-6037
Attorneys for Defendant Swift Aviation Group, Inc.

c. Upon completion of service of the notice as directed above, proof of service by publication shall be made by certificate of SAG's attorney, to which shall be attached a printed copy of the published notices with the names and dates of the newspapers marked thereon.

This, the 22nd day of May, 2009.



The Honorable Albert Diaz
Special Superior Court Judge for Complex Business Cases