

## ALERTS

# Real Estate/Finance, Insolvency & Restructuring Alert - Service Of An Eviction Summons Must “Strictly Comply” With Minnesota Statute § 504B.331

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The Minnesota Court of Appeals recently issued a decision which holds that service of process under Minnesota Law (“Minn. Stat.”) § 504B.331 “requires strict compliance, not merely substantial compliance.” Specifically, *Koski v. Johnson*, No. A12-2274 (Minn. App., September 23, 2013) mandates compliance with each specific component of Minn. Stat. § 504B.331, regardless whether the tenant had other notice of the pending lawsuit. It is therefore critically important that plaintiffs and their counsel follow the statutory requirements to the letter, than merely the “spirit” of the law. Finally, while *Koski* involved a residential tenant, the statute at issue is applicable to both residential and non-residential tenants. As a result, *Koski* is important for its implications for service of process on commercial tenants.

Minn. Stat. § 504B.331 sets forth the guidelines for proper service of a summons in a Minnesota eviction proceeding. Specifically, the statute provides in part:

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or  
(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff’s attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff’s attorney believes that the defendant is not in the state; and  
(ii) a copy of the summons has been mailed to the defendant at the defendant’s last known address if any is known to the plaintiff.

In *Koski*, the plaintiff (landlord) filed an eviction-action complaint against the defendant (tenant) after leaving copies of a “Notice to Terminate Tenancy” in the tenant’s home. The deputy sheriff attempted personal service but was unsuccessful. Thereafter, the deputy left a copy of the summons and complaint at the tenant’s residence by sliding it under the tenant’s door.

The tenant filed an answer to the complaint and moved for dismissal of the case on the grounds that the landlord “improperly used service by mail and posting,” and a trial was scheduled. At a pretrial hearing, the tenant admitted she received a notice of the eviction proceedings. The

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district court then denied the tenant's motion to dismiss on the grounds that the landlord substantially complied with Minn. Stat. § 504B.331. Following trial, the district court concluded that the landlord properly served the tenant with the termination notice and complaint, and granted the landlord a writ of recovery of the premises.

On appeal, the tenant argued service of the eviction summons was improper. Specifically, the tenant argued the landlord failed to comply with Minn. Stat. § 504B.331(d)(2), which notes service can be made by posting the summons if: "the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that: (i) the defendant cannot be found... and (ii) a copy of the summons has been mailed to the defendant...."

The Court noted that while an affidavit was provided by the deputy sheriff who attempted service, this affidavit was not prepared or signed by the plaintiff or his attorney. Further, neither the landlord nor his attorney mailed a copy of the eviction summons to the tenant at any address.

In light of these facts, the Minnesota Court of Appeals concluded the district court erred by denying the tenant's dismissal motion based on the substantial compliance exception. Specifically, the court held "the absence of strict compliance with the affidavit requirement in Minn. Stat. § 504B.331(d)(2) rendered service of the summons on [the tenant] inadequate" and accordingly "the district court lacked personal jurisdiction over [the tenant]." The writ of recovery of the premises issued by the district court was therefore reversed.

In reaching this holding, the Court recognized that the Court had previously applied the substantial-compliance exception to Minn. Stat. § 504B.331's predecessor statute in *Times Square Shopping Ctr., LLP v. Tobacco City, Inc.*, 585 N.W.2d 791 (Minn. App. 1998), review denied (Minn. Jan. 21, 1999). The Court explicitly overruled its decision in *Times Square*, as well as the unpublished decision in *Cent. Internal Med. Assoc., P.A. v. Chilgren*, No. C2-00-36, 2000 WL 987858 (Minn. App. July 18, 2000) (applying the substantial compliance doctrine to § 504(B).331(d)). Additionally, the Court distinguished *Larson v. Hendrickson*, 394 N.W.2d 524 (Minn. App. 1986), which applied a substantial-compliance exception to service of summons in a tort action governed by Minnesota Rule of Civil Procedure 4.03. The Court noted *Larson* was "not an eviction action governed by statute."

The rigid framework established in *Koski*, as well as the Minnesota Court of Appeal's departure from a more flexible approach, counsels practitioners to pay particular attention to specific statutory requirements for service of a summons in an eviction proceeding in Minnesota. Rather than relying on actual receipt or notice of the summons, plaintiffs must ensure all of the components of Minn. Stat. § 504B.331 are satisfied to ensure their clients can obtain the relief they are seeking without having the case dismissed on jurisdictional grounds.

A full copy of the decision is available at: <http://www.mncourts.gov/opinions/coa/current/OPa122274-092313.pdf>

For more information, contact the Barnes & Thornburg attorney with whom you work or David J. Yung at [david.yung@btlaw.com](mailto:david.yung@btlaw.com) or 612-367-8730.

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