

## > Client Alert

### Service by Twitter and E-mail Approved by Federal Judge

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Everyone has seen the cinematic process server crouching in the dark, stalking a target, when a window of opportunity presents itself and the server rushes in and physically hands a subpoena, divorce papers, or some other kind of legal document on the unsuspecting target. This trope exists because our legal system requires a person to be served with proper and adequate notice before being hauled into court. But for at least one federal judge in the Southern District of New York, service can be tweeted at a person on Twitter under certain circumstances.

On March 22, 2023, in the *Three Arrows Capital, Ltd.* bankruptcy case, Case No. 22-10920 (MG),<sup>1</sup> Judge Martin Glenn of the Bankruptcy Court for the Southern District of New York found Twitter and email service of a subpoena upon one of the Debtor's founders, Kyle Livingstone Davies, satisfied due process requirements.

Mr. Davies was not present in the United States to be served, but the Court ruled that as "a United States national or resident who is in a foreign country," he was subject to service under Rule 45 and 28 U.S.C. § 1783 outside the United States.

Having made the threshold ruling about the applicability of Rule 45, the Court then determined that personal service—the process server stalker model—was not required. Rather, service could be made by alternative means—email and social media.

The Court stated "that it considered relevant the fact that the email address in question was the same one that had been provided [previously to parties] for the purpose of fielding informal discovery questions . . . ."<sup>2</sup> These facts made service via email adequate.

As to Twitter, the Judge ruled noted: "(1) the Twitter account has posted frequently since service; (2) the posts appear to be from Davies himself based on their content; and (3) there has been additional activity that would have drawn additional attention to the Subpoena for a frequent Twitter user like Davies."<sup>3</sup> Therefore, in this instance, Twitter service was also sufficient and adequate to satisfy due process.

Obviously, this analysis will be fact-intensive and service via email or social media will not be appropriate under all circumstances. The Court relied on the following

facts: Mr. Davies is purported to be an American citizen. He not only uses Twitter, but does so frequently and personally. And his email address is the one he previously provided to opposing counsel.

As more digital natives are finding themselves in positions of authority at large companies, it is likely that, circumstances-permitting, service via social media will find wider adoption. While the *Three Arrows Capital* decision stands at the forefront of this precedent for service upon difficult to reach, social media-adept parties, it cannot yet be relied upon to support a service by tweet in all circumstances.

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The Morrison Cohen LLP Bankruptcy, Restructuring & Governance Team is actively involved in numerous litigation matters in the bankruptcy context on behalf of debtors, lenders, investors, and officers, directors and board members. We regularly advise companies on litigation tactics and strategies, including service of process issues.

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<sup>1</sup> The decision can be found at *In re Three Arrows Capital, Ltd.*, 647 B.R. 440, 453 (Bankr. S.D.N.Y. 2022).

<sup>2</sup> *Id.* at 455–56.

<sup>3</sup> *Id.* at 456.