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A Clear Message Regarding Service of Process on Joint Ventures & Joint Enterprises—Ryan Contracting, Inc. v. JAG Investments, Inc. & Mellett v. Fairview Health Services

Jan I. Berlage

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**A CLEAR MESSAGE REGARDING SERVICE OF PROCESS
ON JOINT VENTURES & JOINT ENTERPRISES—
*RYAN CONTRACTING, INC. v. JAG INVESTMENTS, INC. &
MELLETT v. FAIRVIEW HEALTH SERVICES***

Jan I. Berlage[†]

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I. INTRODUCTION

In *Ryan Contracting, Inc. v. JAG Investments, Inc.*¹ the Minnesota Supreme Court ruled that, in absence of an express provision in the Minnesota Rules of Civil Procedure or elsewhere providing for joint venture service of process, no such method of service exists in Minnesota. Shortly after that decision, in *Mellett v. Fairview Health Services*,² the supreme court extended its holding in *Ryan* and

[†] The author is a trial attorney with the law firm of Ballard Spahr Andrews & Ingersoll, LLP in Baltimore, Maryland. His practice focuses on construction, commercial, civil rights, bankruptcy and intellectual property litigation.

1. 634 N.W.2d 176 (Minn. 2001) [hereinafter *Ryan II*].

2. 634 N.W.2d 421 (Minn. 2001).

refused to recognize a joint enterprise service of process rule.³ The message from these two cases is clear: The Minnesota Supreme Court takes service of process seriously and will strictly construe the rules applicable to it. But while these decisions do much to clarify the court's position on interpreting rules of service of process, they potentially open a *Pandora's* box concerning the jurisdiction of Minnesota courts over joint ventures and enterprises.

II. BACKGROUND

A. *Joint Enterprises and Joint Ventures*

1. *Joint Enterprises*

The term "joint enterprise" refers to "a cooperative undertaking to carry out a small number of activities or objectives, or even a single one, entered into by members of the group under such circumstances that all have a voice in directing the conduct of the enterprise."⁴ For such a relationship to exist in Minnesota two elements must be present: "(1) a mutual understanding for a common purpose, and (2) a right to a voice in the direction and control of the means used to carry out the common purpose."⁵

Generally, in the context of a joint enterprise, each member is considered the agent or servant of the others, so that the act of any member within the scope of the enterprise is charged vicariously against the rest.⁶ "Thus, when the negligence of a member of a joint enterprise (acting within the scope of the enterprise) causes harm to a third person, such negligence is imputed to all other members, who become mutually liable."⁷

2. *Joint Ventures*

A joint venture is an association of persons or companies

3. The author thanks attorneys Barbara A. Burke and Mark R. Whitmore for providing copies of the pertinent legal memoranda filed in *Mellett*.

4. *Pritchett v. Kimberling Cove, Inc.*, 568 F.2d 570, 579 (8th Cir. 1977), *cert. denied*, 436 U.S. 922 (1978) (applying Minnesota law).

5. *Olson v. Ische*, 343 N.W.2d 284, 288 (Minn. 1984) (quoting *Delgado v. Lohmar*, 289 N.W.2d 479, 482 (Minn. 1979)).

6. *Pritchett*, 568 F.2d at 579-80 (citations omitted).

7. *Id.* at 580.

jointly undertaking some commercial enterprise.⁸ For such a relationship to exist in Minnesota four elements must be present: (1) contribution, i.e., the parties must combine money, property, time, or skill in some common undertaking; (2) joint proprietorship or control, i.e., a propriety interest and right of mutual control over the subject matter of the property engaged in the venture; (3) sharing of profits and loss; and (4) a contract, whether express or implied, showing that joint venture was entered into.⁹ The basic difference between a joint venture and joint enterprise is that “[a] business relationship is needed for a joint venture but not a joint enterprise,” or, to be more precise, “a joint venture requires an agreement to share profits as well as a contract demonstrating the existence of the joint relationship.”¹⁰ Consequently, while all joint ventures are joint enterprises, not all joint enterprises are joint ventures.¹¹

It has been said that a joint venture is a species of partnership.¹² Not surprisingly, therefore, under Minnesota law, “the rules and principles applicable to a partnership relation, with few if any material exceptions, govern and control the rights, duties, and obligations of the parties [to a joint venture].”¹³ Accordingly, joint venturers, like partners, are jointly liable for negligent work undertaken on behalf of their mutual undertaking,¹⁴ and “their members may be sued individually and

8. *Meyers v. Postal Fin. Co.*, 287 N.W.2d 614, 617 (Minn. 1979). In *Meyers*, the Minnesota Supreme Court stated that a “[j]oint venture is a remedial status imposed by a court to hold a party responsible for the results of an enterprise over which the party has effective control even though it is not nominally responsible.” *Id.*

9. *Rehnberg v. Minn. Homes, Inc.*, 236 Minn. 230, 235, 52 N.W.2d 454, 457 (1952); *Beehner v. Cragon Corp.*, 636 N.W.2d 821, 832 (Minn. Ct. App. 2001), *review denied*; *Powell v. Trans Global Tours, Inc.*, 594 N.W.2d 252, 256 (Minn. Ct. App. 1999).

10. *Mellet*, 634 N.W.2d at 424 (quoting *Olson*, 343 N.W.2d at 288).

11. *Id.* at 424.

12. *Ringier Am. Inc. v. Land O’Lakes, Inc.*, 106 F.3d 825, 828 (8th Cir. 1997); *see also Salt Lake Knee & Sports Rehab., Inc. v. Salt Lake City Knee & Sports Med.*, 909 P.2d 266, 269 (Utah Ct. App. 1995) (citing cases for the proposition that joint ventures are separate legal entities subject to same rules as partnerships).

13. *Ringier*, 106 F.3d at 828 (quoting *Rehnberg*, 236 Minn. at 235, 52 N.W.2d at 457).

14. *Austin P. Keller Constr. Co. v. Commercial Union Ins. Co.*, 379 N.W.2d 533, 535 (Minn. 1986); *Krengel v. Midwest Automatic Photo, Inc.*, 295 Minn. 200, 208, 203 N.W.2d 841, 846 (1973).

found liable for damages caused by the joint venture.”¹⁵ A joint venture, like a partnership, “continues to exist legally as long as it can be found liable for damages arising from [the] joint venture.”¹⁶

B. Minnesota’s Service Requirements

Rule 3.01 of the Minnesota Rules of Civil Procedure provides that a civil action is commenced against a defendant when the summons is served upon that defendant or when the summons is delivered to the sheriff for service in the county where the defendant resides, provided the summons is actually served on that defendant within sixty days after service.¹⁷ In general, Rule 4.03 of the Minnesota Rules of Civil Procedure governs service of process. It requires that service on a partnership or association be made “by delivering a copy to a member or the managing agent of the partnership or association.”¹⁸ In the case of a corporation, it mandates that service be made on “an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons”¹⁹ Rule 4.03 is silent as to how service must be made on joint enterprises and joint ventures.

The purpose behind Rule 4.03 is to give actual, formal notice to defendants of pending actions.²⁰ Ordinarily, this is accomplished by a sheriff or process server handing of a copy of the summons and complaint to the defendant.²¹ Where entities are already parties to an action, however, service of pleadings may be mailed to their attorneys under Rule 5.02. In applicable part, that rule provides:

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney

15. *Austin P. Keller Constr. Co.*, 379 N.W.2d at 535.

16. *Id.*

17. MINN. R. CIV. P. 3.01 (2001).

18. MINN. R. CIV. P. 4.03(b) (2001).

19. MINN. R. CIV. P. 4.03(c) (2001).

20. *O'Sell v. Peterson*, 595 N.W.2d 870, 872 (Minn. Ct. App. 1999).

21. *Erickson v. Coast Catamaran Corp.*, 414 N.W.2d 180, 183 (Minn. 1987) (“The primary concern with allowing an agent to receive service for the corporation has generally been to protect a defendant from any prejudice which could result from lack of notice.”).

unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; transmitting a copy by facsimile machine to the attorney or party's office; or by mailing a copy to the attorney or party at the attorney's or party's last known address

Whether it be under Rule 4.03, Rule 5.02 or another service of process rule, service must be made in strict accordance with the applicable rule, since service in a manner not authorized by the rules is ineffective.²²

Prior to *Ryan* and *Mellett*, a very real question existed in Minnesota as to how to interpret the procedural rules governing service of process. The uncertainty in this area resulted from two inconsistent lines of cases. On the one hand, some cases have held that service of process requirements, like other procedural rules, should be construed liberally.²³ The rationale being that controversies should be decided on their merits rather than on technicalities.²⁴ On the other hand, some cases refused to treat service of process as a mere technicality. These cases viewed service of process as serving the important function of actual, formal notice to the defendant of the action.²⁵ Thus, these cases held that service of process requirements should be strictly construed.²⁶ Prior to *Ryan* and *Mellett*, therefore, there was no clear precedence

22. *Tullis v. Federated Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997).

23. *Derrick v. Drolson Co.*, 244 Minn. 144, 155, 69 N.W.2d 124, 131 (1955) ("Rule 4.03(c) . . . like other procedural rules, should be liberally construed.").

24. *Pederson v. Clarkson Lindley Trust*, 519 N.W.2d 234, 235 (Minn. Ct. App. 1994) ("a fundamental principle of the rules of civil procedure is that cases should be decided on the merits rather than on technicalities, and where the intended recipient receives actual notice of the action, the rules governing such service should be liberally construed to avoid depriving a litigant of his day in court."); see also *Thomes v. Atkins*, 52 F.Supp. 405, 409 (D. Minn. 1943) (stating that the statute authorizing service on nonresident licensed broker by service on commissioner of securities should be construed broadly).

25. See *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 (Minn. 2000) ("We have not treated service of process as a mere technicality, as it serves the important function of actual, formal notice to the defendant of the action.").

26. *Berryhill v. Sepp*, 106 Minn. 458, 459, 119 N.W. 404, 404 (1909) ("[S]ervice must accord strictly with statutory requirements."); *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. Ct. App. 1999) (stating that service of process must accord strictly with statutory requirements).

on how to interpret the rules governing service of process in situations where those rules are silent.

C. Service on Joint Enterprises and Joint Ventures in Other Jurisdictions

Although neither the court of appeals nor the supreme court looked outside of Minnesota to determine whether to recognize a joint enterprise and/or joint venture rule of service, other jurisdictions have wrestled with this issue in circumstances similar to that of *Ryan and Mellett*, *i.e.*, situations where their state law was silent on this issue. In Florida, the Court of Appeals for the Third Judicial District, took the same position as the Minnesota Supreme Court that the procedural rules governing service of process must be strictly construed. In absence of express statutory language, that court refused to recognize a joint service of process rule under Florida law:

[W]e note that statutes involving service of process upon non-residents must be accorded a strict construction Moreover, a joint venture is not a legal entity in the same sense of a partnership, even though the distinction is often blurred. From our reading of the Supreme Court's opinion in *Largay Enterprises, Inc. v. Berman*, we conclude that service of process upon one member of a joint enterprise is not sufficient to confer jurisdiction over another member under the law of this state.²⁷

But this seems to be a minority point of view. At least in the case of joint ventures, the majority of courts have held that joint ventures are subject to the same rules as partnerships.²⁸ Since service on one member of the partnership generally constitutes service on all members, these courts recognize a joint venture service of process rule. These courts include appellate courts in New York²⁹ and Illinois,³⁰ the Pennsylvania Supreme Court,³¹ the

27. *Elting Ctr. Corp. v. Diversified Title Corp.*, 306 So.2d 542, 543 (Fla. Dist. App. 1975) (citations omitted).

28. See 46 AM. JUR. 2d *Joint Ventures* § 73 (2002).

29. *John's, Inc. v. Island Garden Ctr. of Nassau, Inc.*, 269 N.Y.S.2d 231, 236 (1966); *Sullivan Realty Org., Inc. v. Syart Trading Corp.*, 68 A.D.2d 756, 759 (N.Y. App. Div. 1979).

30. *Pyskaty v. Oyama*, 641 N.E.2d 552, 569 (Ill. App. Ct. 1994); *Japczyk v. Gust K. Newberg Constr. Co.*, 586 N.E.2d 572, 574 (Ill. App. Ct. 1991).

31. *Cent. Contracting Co. v. C.E. Youngdahl & Co.*, 209 A.2d 810, 814 (Pa.

Arizona Supreme Court,³² and the United States Court of Appeals for the Third Circuit.³³

III. THE CASES: *RYAN* AND *MELLETT*

A. *Ryan: Facts and Procedural History*

1. *Facts*

a. *The Parties*

Several property owners and a land developer entered into a joint venture to develop several parcels of residential property known as the Fairway Hills residential development project, Chaska, Minnesota.³⁴ The landowner of most of the property being developed was JAG Investment, Inc. (“JAG”).³⁵ Its sole shareholder was Jim Jagodzinski.³⁶ Jim Jagodzinski’s father, Joe Jagodzinski, was the president and sole shareholder of the developer, Jagodzinski Development Corporation (“JDC”).³⁷ Although JAG was not the only party to own portions of the Fair Hills property, it was the only party to appeal the court of appeals’ ruling to the supreme court.³⁸

b. *The Underlying Cause of Action*

In April 1997, JAG contracted with Ryan Contracting, Inc. (“Ryan”) to perform clearing, grading, sewer and water main installation and street construction at the Fairway Hills’s property.³⁹ In turn, Ryan subcontracted with GMH Asphalt Corporation (“GMH”) to perform street and paving work.⁴⁰ On April 8, 1998,

1965).

32. *Columbia Group, Inc. v. Jackson*, 725 P.2d 1110, 1113 (Ariz. 1986).

33. *Bloomfield Mech. Contracting, Inc. v. Occupational Safety & Health Rev. Comm.*, 519 F.2d 1257, 1261 (3d Cir. 1975).

34. *Ryan Contracting, Inc. v. JAG Inv., Inc.*, 609 N.W. 2d 642, 644 (Minn. Ct. App. 2000) [hereinafter *Ryan I*].

35. *Ryan II*, *supra* note 1, at 179.

36. *Id.*

37. *Id.*

38. *Id.* at 179 n.1.

39. *Id.* at 179.

40. *Ryan I*, *supra* note 34, at 644.

Ryan served and filed a mechanics' lien against the Fairway Hills property to recover amounts it claimed JDC owed it.⁴¹ Although the lien listed Ryan's last day of work as December 16, 1997, Ryan later claimed that it performed additional work after the lien was filed, and that its last day of work on the property was actually September 13, 1998.⁴² On October 5, 1998, GMH served and filed its own mechanics' lien on the property that listed GMH's last day of work as June 16, 1998.⁴³

On December 4, 1998, Ryan filed a complaint against JDC, JAG and GMH, which, among other things, sought to foreclose on Ryan's lien.⁴⁴ In its Complaint, Ryan specifically alleged that JDC and JAG "are related business entities and share common ownership and control."⁴⁵ Ryan personally served JDC on that same day by serving its summons and complaint on Joe Jagodzinski, but did not serve JAG.⁴⁶ Nonetheless, JAG answered Ryan's complaint on December 23, 1998, and raised as the affirmative defense lack of personal jurisdiction.⁴⁷

On December 28, 1998, GMH filed its answer and asserted a cross-claims against JAG, which, among other things, sought to foreclose GMH's mechanics' lien.⁴⁸ Pursuant to Minnesota Rule of Civil Procedure 5.02, GMH served its answer and cross-claim on the parties' attorneys.⁴⁹ At no point did it personally serve its pleadings on JAG.⁵⁰

On July 15, 1999, JAG and JDC filed a motion for summary judgment.⁵¹ In the memorandum of law supporting that motion,⁵² JAG argued for dismissal of Ryan's complaint and release of JAG's property from Ryan and GMH's liens based upon lack of personal

41. *Ryan II*, *supra* note 1, at 179.

42. *Id.*

43. *Id.* at 180 n.4.

44. *Id.* at 179.

45. *Ryan I*, *supra* note 34, at 645.

46. *Ryan II*, *supra* note 1, at 179.

47. *Id.* at 180.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.03; *Goeb v Tharaldson*, 615 N.W.2d 800, 817 (Minn. 2000).

jurisdiction. JAG also argued for summary judgment based upon the merits of the case.⁵³ Shortly thereafter, sometime in August 1999, eight months after the one-year time limit had expired, Ryan personally served JAG.⁵⁴

2. District Court

On September 21, 1999, the district court denied JAG's motion for summary judgment, finding that it had personal jurisdiction over JAG even though it was "undisputed that [Ryan] never served [JAG] . . . individually with the Summons and Complaint during" the one-year time limit set by Minnesota Statutes section 514.12 subdivision 3.⁵⁵ Indeed, the district court found that December 16, 1997, was Ryan's last day of work, and that Ryan had until December 16, 1998 to serve JAG. Although Ryan served JDC by that deadline, it did not personally serve JAG by then.⁵⁶ Nonetheless, the district court held that Ryan had effectively served JAG under alternative theories of service:

[B]oth [Ryan] and GMH Asphalt argue that the lien foreclosures are still valid. [JAG] has appeared and participated in every aspect of this case. In addition, Defendant JDC and [JAG] are undertaking the development of the subject property as a "joint venture" . . . Defendants was [sic] served and did file answers and responsive papers on behalf of his clients. Furthermore, the action itself, which names [JAG as a party], was commenced within the required time period. For these reasons, [Ryan] and GMH argue that property owners have been made party to the action. The Court agrees and finds that, based on all the reasons just discussed, [JAG is a] legitimate part[y] to this action Thus, [JAG is] subject to judgment on the foreclosure of the mechanic's liens and the motion for summary judgment on this point is denied.⁵⁷

Its motion for summary judgment having been denied, JAG appealed the district court's decision to the court of appeals.⁵⁸

53. *Ryan II*, *supra* note 1, at 180.

54. *Id.*

55. See MINN. STAT. § 514.12, subd. 3 (2000).

56. *Ryan II*, *supra* note 1, at 180.

57. *Id.* at 180-81.

58. *Id.* at 181.

3. Court of Appeals

Noting that whether “one member of joint venture is an ‘agent’ authorized to accept service of process for another member” was an issue of first impression in Minnesota, the court of appeals in a published opinion agreed with the district court’s analysis that service against JAG and the other property owners was effective under a joint venture theory of service.⁵⁹ In the absence of direct authority on point, the court of appeals looked to the supreme court’s holding in *Erickson v. Coast Catamaran Corp.*, in which that court observed: “The primary concern with allowing an agent to receive service for the corporation has generally been to protect a defendant from prejudice which could result from lack of notice.”⁶⁰ The court of appeals then cited its prior decision of *Pederson v. Clarkson Lindley Trust* for the proposition that the procedural rules governing service should be liberally construed.⁶¹ The court also observed that mandates of the mechanics’ lien statutes required “that the substantive rights of lien claimants should not be decided on technical grounds, particularly if no harm results.”⁶² Thus, the court of appeals applied a liberal reading of the Rules of Civil Procedure and mechanics’ lien statutes, and held that those rules implicitly allowed for joint venture service of process.⁶³

Finding that JDC and JAG engaged in a joint venture and that JDC had properly been served, the court concluded that “[s]ervice of process on JAG was effective because JAG’s joint-venture partner was properly served, JAG received actual notice, and JAG was not prejudiced.”⁶⁴ Having lost again, JAG appealed to the Minnesota Supreme Court.

59. *Ryan I*, *supra* note 34, at 645.

60. *Id.* (quoting *Erickson v. Coast Catamaran Corp.*, 414 N.W.2d 180, 183 (Minn. 1987)).

61. *Id.* at 645 n.2 (quoting *Pederson v. Clarkson Lindley Trust*, 519 N.W.2d at 235).

62. *Id.* at 645 (citing *R.B. Thompson, Jr. Lumber Co. v. Windsor Dev. Corp.*, 383 N.W.2d 357, 361 (Minn. Ct. App. 1986)).

63. *Id.* at 646.

64. *Id.* at 647.

B. *The Ryan Decision*

1. *The Court's Decision as to Ryan*

a. *Joint-Venture Theory of Service*

JAG protested the lower courts' finding that it had properly been served under a joint-venture theory of service because it argued no such relationship existed between it and JDC.⁶⁵ Although it agreed with JAG that the question of whether such a relationship existed was an unresolved factual issue, the supreme court did not base its opinion on that finding.⁶⁶ Rather, the court focused on whether Minnesota recognized a joint-venture theory of service at all. For the answer to this question, the court looked to the Rules of Civil Procedure and Minnesota mechanics' lien statutes, and found that neither "expressly permit joint-venture-based service."⁶⁷

The court then turned to the issue of whether the Minnesota Rules of Civil Procedure could be construed to allow for such service. While the court of appeals had looked to precedent that permitted Minnesota's procedural rules to be construed liberally, the Supreme court cited its own precedent to the opposite effect: "Moreover, 'we have not treated service of process as a mere technicality, as it serves the important function of actual, formal notice to the defendant of the action.'"⁶⁸ The court went on to state: "Recognizing the important function that service of process fulfills, and recognizing the due process implications involved, we have always required parties to adhere strictly to service requirements."⁶⁹ Thus, the court applied a strict interpretation to the rules and declined "to adopt a joint-venture service rule."⁷⁰

Noting that the court of appeals also supported its decision by

65. *Ryan II*, *supra* note 1, at 182.

66. *Id.*

67. *Id.* (citing *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959)). In *Moseng*, the court determined that in the absence of an express provision, the court may not supply amendments to the statute. *Moseng*, 254 Minn. at 269, 95 N.W.2d at 11-12.

68. *Ryan II*, *supra* note 1, at 182 (quoting *Patterson*, 608 N.W.2d at 867).

69. *Id.* (citing *Tullis*, 570 N.W.2d at 311 and *Berryhill*, 106 Minn. at 459, 119 N.W. at 404).

70. *Id.*

stating that JAG was not prejudiced by Ryan's improper service because JAG had actual notice of the suit, the supreme court pointed out that, "actual notice of the lawsuit will not subject defendants to personal jurisdiction without substantial compliance with' the rules of service."⁷¹ Ergo, the court concluded that "JAG's actual notice of the lien action without more, is insufficient to subject JAG to personal jurisdiction."⁷²

b. Ryan's Alternative Arguments

In the event that the supreme court rejected its theory of joint-venture service, Ryan argued that the lower courts' decisions should be upheld on two alternative grounds: (1) that despite the district court and court of appeals' conclusions to the contrary, it did serve JAG within the one-year time limit imposed by the lien statutes and therefore made JAG a party to its lien action; and (2) that JAG waived its jurisdictional defense through its participation in the litigation.⁷³

(1) Ryan's One-Year Time Limit Argument

While acknowledging that the requirements for creating a mechanics' lien are to be strictly construed, Ryan argued that the one-year time limit for service of a mechanics' lien complaint pursuant to Minnesota Statutes section 514.12, subdivision 3, was an enforcement provision and, thus, should be liberally construed.⁷⁴ Thus, Ryan argued that it had fundamentally satisfied the one-year time limit to commence its action because it had filed its summons and complaint within one year of December 16, 1997, which marked its last day of work as listed in its lien statement.⁷⁵ The supreme court disagreed with Ryan's contention that the one-year time limit was simply an enforcement provision:

71. *Id.* (quoting *Tullis*, 570 N.W.2d at 311).

72. *Id.* at 183. *See also* *Thiele v. Stich*, 425 N.W.2d 580, 584 (Minn. 1988) ("Actual notice will not subject defendants to personal jurisdiction absent substantial compliance with Rule 4."); *Larson v. New Richland Care Ctr.*, 520 N.W.2d 480, 482 (Minn. Ct. App. 1994) ("Actual notice of a lawsuit will not subject a defendant to personal jurisdiction unless the plaintiff substantially complied with MINN. R. CIV. P. 4.").

73. *Ryan II*, *supra* note 1, at 183.

74. *Id.*

75. *Id.*

The one-year limitation of the lien statutes is no ordinary statute of limitations; it puts a limit to the life and duration of the lien The statute requires that not only filing a complaint, but also making the defendant-landowner a party to the suit—accomplished by serving the defendant-landowner with the summons—must be done with in one year.⁷⁶

The court concluded, therefore, that “the one-year time limit on service, like the one-year time limit on filing the complaint, is not merely an enforcement provision of the statute but rather is a requirement for the creation of a lien action and must be strictly construed.”⁷⁷ Since Ryan had not served its complaint on JAG within one year from its last day of work, Ryan’s lien action against JAG ceased to exist after that one-year period.⁷⁸

Ryan also argued that it had satisfied the one-year time limit of section 514.12, subdivision 3, because its last day of work was actually September 13, 1998, not December 16, 1997 as indicated in its lien statement, so that it had served JAG within one year of its last day of work on the property.⁷⁹ In rejecting this argument, the court again applied a strict construction standard to section 514.12.⁸⁰ As the court observed, the plain language of that statute requires that a mechanics’ lien “complaint be filed, and that service be made ‘within one year after the date of the last item of the claim as set in the recorded lien statement.’”⁸¹ The court further buttressed this conclusion by citing to policy considerations:

This conclusion is supported not only by the plain language of section 514.12, subd. 3, but also by strong policy considerations: “It has been the policy of our statutes creating mechanics’ liens to fix a definite time when such liens should terminate, to the end that those interested in the property, or dealing with it, might know

76. *Id.*

77. *Id.* at 183-84; *see also* Dolder v. Griffin, 323 N.W.2d 773, 780 (Minn. 1982) (stating that the requirements for the attachment and creation of a mechanic’s lien should be strictly construed). *See generally* Maurice T. Brunner, Annotation, *Who Is The Owner Within Mechanic’s Lien Statute Requiring Notice Of Claim*, 76 A.L.R.3d 605 (1977) (discussing the interpretation of mechanic’s lien laws).

78. *Ryan II*, *supra* note 1, at 184.

79. *Id.*

80. *Id.*

81. *Id.* (quoting MINN. STAT. § 514.12, subd. 3).

with certainty when it was free from such claims”⁸²

Accordingly, Ryan had until December 16, 1998 to serve JAG, so that its August 1999 service was untimely.

(2) Ryan’s Waiver Argument

Ryan’s final argument was that JAG had effectively waived its jurisdictional defense through its active participation in the litigation.⁸³ Ryan’s last argument, in many ways, was one of its strongest arguments. JAG had fully participated in the litigation and, as Ryan noted, had taken the following actions consistent with its having waived jurisdictional defenses: (1) JAG waited seven months after answering before moving for summary judgment due to lack of personal jurisdiction; (2) during that time, JAG served discovery requests on the parties; (3) JAG noticed and attended depositions on the merits of the claims; (4) JAG attended court ordered mediation; (5) JAG filed a motion to compel discovery responses and requested reimbursement of its costs and fees for having done so.⁸⁴ In addition, JAG moved for summary judgment on the merits of the claims.⁸⁵

In ruling on Ryan’s waiver argument, the court looked to its recent decision of *Patterson v. Wu Family Corporation*.⁸⁶ In *Patterson*, the court had found that, although the defendant asserted lack of personal jurisdiction as an affirmative defense in its answer, it had nonetheless waived that defense when it invoked the jurisdiction of the district court to obtain a partial summary judgment on the merits without earlier or simultaneously moving to dismiss the complaint for insufficient process.⁸⁷ The *Ryan* court differentiated JAG’s action from those of the defendant in *Patterson* in that JAG had moved for summary judgment on the merits and on insufficiency of process at the same time.⁸⁸ Thus, the court reasoned, unlike the *Patterson* defendant, JAG had not failed to provide the court with an opportunity to rule on the issue of

82. *Id.* (quoting *Bauman v. Metzger*, 145 Minn. 133, 140, 176 N.W. 497, 500 (1920)).

83. *Id.*

84. *Id.* at 185.

85. *Id.*

86. *Id.* (citing *Patterson*, 608 N.W.2d 863).

87. *Patterson*, 608 N.W.2d at 867.

88. *Ryan II*, *supra* note 1, at 185.

proper service before ruling on the merits.⁸⁹ Accordingly, the court found that JAG had not waived its personal jurisdiction defense.⁹⁰

2. *The Court's Decision as to GMH*

Having concluded that Ryan did not serve JAG and that the district court had no personal jurisdiction, the court turned to whether GMH's cross-claim against JAG survived.⁹¹ Again, this issue turned on whether GMH's service on JAG was proper. GMH had not personally served JAG but, instead, relying upon Minnesota Rule of Civil Procedure 5.02, had mailed its papers to JAG's attorney.⁹² Under Rule 5.02, such service would be permissible if JAG was already a party to the litigation.⁹³ But having just held that since JAG was not a party to Ryan's lawsuit, the court found that GMH could not rely on Rule 5.02 and that its service on JAG's attorney was ineffective.⁹⁴

Although it recognized that GMH was bound to intervene in Ryan's original proceeding and that GMH could not have known about the deficiency of Ryan's service, the court was not sympathetic to GMH's plight.⁹⁵ The court observed that GMH could have avoided the problem by personally serving its answer on JAG pursuant to Rule 4.03.⁹⁶ Citing two Minnesota legal education publications, the court pointed out that personal service in such situations had always been the recommended practice.⁹⁷ The court then re-emphasized what it had said with regard to Ryan's service: "Service rules should be clear; parties should not be left to guess what, under different factual scenarios, will be an acceptable method of service. Requiring strict compliance achieves this result."⁹⁸ Consequently, the court reversed the court of appeals and dismissed GMH's lien claim for lack of personal service.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 187.

93. *Id.*

94. *Id.* at 188.

95. *Id.* at 187.

96. *Id.* (referring to MINN. R. CIV. P. 4.03(c)).

97. *Id.* at 188.

98. *Id.*

3. *The Dissent*

The minority's concurring and dissenting opinion (the "Dissent"), which was written by Justice Gilbert and joined by Justice Paul Anderson, agreed with the majority's decision declining to adopt a joint-venture service rule.⁹⁹ The Dissent also agreed with the majority "that actual notice of the mechanics' lien action without service was insufficient to subject JAG to personal jurisdiction."¹⁰⁰ But because additional theories of personal jurisdiction existed that had not been considered by the lower courts, the Dissent believed that the case should have been remanded back to the district court for further factual findings rather than simply reversed.¹⁰¹ The dissent also disagreed with the majority's ruling as to GMH because it held that the Minnesota Lien Statutes modified the rules of service in the context of mechanics' lien litigation and that GMH's service on JAG complied with those modified rules.¹⁰²

a. Personal Jurisdiction Over JAG in Ryan's Lien Action

The Dissent agreed with the majority's refusal to adopt a joint-venture service rule.¹⁰³ It also agreed with the majority's finding that actual notice of a mechanics' lien action without service is insufficient to subject a party to personal jurisdiction.¹⁰⁴ To hold otherwise, the Dissent stated would be "to create new rules of service of process or depart from the plain meaning of statutory language."¹⁰⁵ The Dissent and the majority parted ways, however, on this issue of whether the case should have been remanded rather than reserved.¹⁰⁶ The Dissent would have remanded the case to the district court for further factual findings regarding the relationship between JDC and JAG.¹⁰⁷

Specifically, Ryan's complaint alleged that JDC and JAG were "related business entities and share common ownership and

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 188-89.

103. *Id.* at 189.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

control.”¹⁰⁸ That allegation, the Dissent argued, raised two theories that could support a finding that the district court had personal jurisdiction over JAG. First, there could be a principal-agent relationship between JDC and JAG such that service upon JDC was sufficient to provide personal jurisdiction over JAG.¹⁰⁹ Second, JDC and JAG may have been a family partnership so that service upon JDC constituted service upon JAG.¹¹⁰

In support of this argument, the Dissent pointed to several facts in the record. First, it observed that the record indicated that JAG was wholly owned by Jim Jagodzinski and that JDC was wholly owned by Jim Jagodzinski’s father, Joe Jagodzinski.¹¹¹ Second, there was some indication that JAG and JDC operated out of the same Fairway Hills office, so that it was unclear who really owned the Fair Hills property.¹¹² Finally, there was a joint-venture and profit sharing agreement between JDC and JAG.¹¹³ All of these facts the Dissent believed either suggested that JDC and JAG engaged in business as a partnership or that JDC was an agent of JAG.¹¹⁴ At a minimum, these facts indicated “that Ryan’s improvements to Fairway Hills through JDC were done with the knowledge and consent of JAG.”¹¹⁵ Thus, the Dissent contended it was possible that service of JDC was sufficient service as to JAG in the Ryan’s action¹¹⁶ and it would have remanded this issue back to the district court for further factual inquiry.¹¹⁷

The Dissent also found that remanding the case back to the district court was appropriate under modern day notice pleading practice, which it held required a broad reading of Ryan’s

108. *Id.*

109. *Id.* The court referred to the agency rule in *Derrick v. Drolson Co. Id.* *Derrick* defined agency as “the relationship that results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to control, and consent by the other to act.” *Derrick v. Drolson Co.*, 244 Minn. 144, 148, 69 N.W.2d 124, 127 (1955). *But see* *Wold v. J.B. Colt Co.* 102 Minn. 386, 389, 114 N.W. 243, 243 (1907) (stating that for the purposes of receiving service of summons, an agency relationship created by estoppel or implication of law is not sufficient).

110. *Ryan II, supra* note 1, at 189. *See* MINN. STAT. § 540.152 (2000).

111. *Ryan II, supra* note 1, at 189.

112. *Id.*

113. *Id.* at 190.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

complaint:

The majority's summary disposition of this case selectively ignores our notice pleading standard. In dismissing this case, the majority is granting JAG summary judgment relief on one jurisdictional ground—the joint-venture theory—even though the parties never advanced the joint-venture theory of jurisdiction to the district court. Yet the majority ignores the agency and partnership theories of jurisdiction that were placed before the district court by Ryan's complaint. Since the days of the code pleadings are gone, Ryan properly raised the agency and partnership theories of personal jurisdiction by asserting in its complaint that JDC and JAG are "related business entities and share common ownership and control."¹¹⁸

Moreover, the Dissent held that a remand of the action was more in keeping with the purpose of the Minnesota Mechanics' Lien Statute, since its stated purpose is "to protect the rights of workmen and material men who furnish labor and material in the improvement of real estate."¹¹⁹ The statute's longstanding promise was that "he whose property is enhanced in value by the labor and toil of others should be made to respond in some way by payment and full satisfaction for what he has secured."¹²⁰

b. Personal Jurisdiction Over JAG in GMH's Cross-claim

The Dissent also rejected the majority's reasoning as to GMH's cross-claim, accusing the majority of "improperly import[ing] the rules of civil procedure into our mechanics' lien jurisprudence."¹²¹ Specifically, the Dissent agreed that, while the Mechanics' Lien Statutes do not set forth rules of service of process, that alone does not mean that they fail to provide rules for making one a party to a mechanics' lien action.¹²² Under the rules for establishing party status detailed in the Mechanics' Lien Statutes, the Dissent

118. *Id.* The Minnesota Rules of Civil Procedure state that "pleadings must generally consist of a short and plain statement of the claim showing that the pleader is entitled to relief. . ." MINN. R. CIV. P. 8.01. Also, the Minnesota Rules state that "pleading[s] shall be simple, concise, and direct." MINN. R. CIV. P. 8.05.

119. *Ryan II*, *supra* note 1, at 190.

120. *Id.* at 191 (quoting *Emery v. Hertig*, 60 Minn. 54, 57, 61 N.W. 830, 831 (1895)).

121. *Id.* at 193.

122. *Id.* at 191.

contended one could be made a party without being served:

Under the rules of civil procedure, service and party status are inextricably linked. One must be served to be a party. Under the rules for establishing party status detailed in the Mechanics' Lien Statute, however, one can be a party without being served. In arguing that party status is always a function of service of process, the majority improperly imposes a rule applicable in ordinary civil actions on statutory mechanics' lien actions. This directly contradicts the Mechanics' Lien Statute as well as prior decisions of this court.¹²³

The Dissent then cited a 1893 case, *Sandberg v. Palm*,¹²⁴ a 1920 case, *Bauman v. Metzge*,¹²⁵ and a 1925 case, *Olson & Serley Sash & Door Co. v. Juckem*,¹²⁶ for the proposition that the filing of an answer commences an action to foreclose on a mechanics' lien and that service is merely a collateral issue.¹²⁷ Therefore, the Dissent would have ruled that, when GMH filed its answer with the court, it was in compliance with all of the statutory requirements for commencing the action and that JAG was a proper party to that action.¹²⁸

C. Mellett: *Facts and Procedural History*

1. *Facts*

On January 3, 1997, Susannah Mellett voluntarily sought chemical dependency treatment at Fairview Southdale Hospital.¹²⁹ While at the hospital, she was placed on a 72-hour hold¹³⁰ and transported to Fairview Riverside Medical Center ("Fairview Riverside") where Dr. David Johnson, a psychiatrist, treated her. Mellett voluntarily remained at Fairview Riverside in its chemical dependency program after the 72-hour medical hold expired.¹³¹

123. *Id.*

124. 53 Minn. 252, 255, 54 N.W. 1109, 1109 (1893).

125. 145 Minn. 133, 140, 176 N.W. 497, 500 (1920).

126. 163 Minn. 375, 377, 204 N.W. 51, 52 (1925).

127. *Ryan II*, *supra* note 1, at 191-92.

128. *Id.* at 192.

129. *Mellett v. Fairview Health Services*, 634 N.W.2d 421, 423 (Minn. 2001).

130. See MINN. STAT. § 253B.05, subds. 1, 3 (2000). Under this provision, a treatment facility may hold a patient for up to seventy two hours for the purpose of emergency care and treatment. *Id.*

131. *Id.*

On January 10, Mellett decided to leave the program, but changed her mind after speaking with her mother. Shortly after that, Fairview Riverside initiated another 72-hour hold.¹³² Prior to the expiration of the second hold, Fairview Riverside filed a petition to have Mellett involuntarily committed.¹³³ As part of the commitment proceedings, Dr. Johnson completed an "Examiner's Statement in Support of Petition for Commitment."¹³⁴ According to Mellett, when the second 72-hour hold expired, Fairview Riverside continued to hold her pending the resolution of the commitment petition.¹³⁵

At a preliminary hearing on January 21, a referee ordered Mellett released and scheduled another hearing for January 24.¹³⁶ Mellett claims that, despite the referee's order, Fairview Riverside did not allow her to leave for several hours.¹³⁷ At the January 24 hearing, the referee found that Mellett's chemical dependency problems could be adequately addressed through voluntary inpatient treatment and, thus, dismissed Fairview Riverside's commitment petition without prejudice.¹³⁸

Two years later, Mellett brought an action against Fairview Riverside, Dr. Johnson and others associated with the hospital, alleging defamation, intentional infliction of emotional distress, negligence and false imprisonment.¹³⁹ Mellett served a copy of her summons and complaint on Fairview Riverside on January 21, 1999.¹⁴⁰ She delivered a copy of the summons and complaint to the County Sheriff for service on Dr. Johnson at some point between January 22 and January 25, 1999.¹⁴¹

2. District Court

Dr. Johnson moved for summary judgment against all of Mellett's claims on the ground that they were time barred.¹⁴² In

132. *Id.* See MINN. STAT. § 253B.07, subd. 2(c) (2000).

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 422-23.

140. *Id.* at 423.

141. *Id.*

142. *Id.*

response, Mellett argued that her claims against Dr. Johnson were not time barred because Dr. Johnson was engaged in a joint enterprise with Fairview Riverside, so that her timely service on Fairview Riverside constituted timely service on him.¹⁴³ The district court rejected Mellett's argument and granted Dr. Johnson's motion for summary judgment.¹⁴⁴

3. *Court of Appeals*

The court of appeals affirmed the district court's holding that Mellett's claims were time barred, except for her false imprisonment claim.¹⁴⁵ With respect to that claim, the court of appeals found the applicable statute of limitations period to be two years from January 21, 1997, the date Fairview Riverside had allegedly falsely imprisoned Mellett.¹⁴⁶ The court of appeals found that Dr. Johnson had engaged in a joint-enterprise with Fairview Riverside.¹⁴⁷ Adopting a joint-enterprise theory of service, the court of appeals concluded that the controlling date of service for all defendants, including Dr. Johnson, was January 21, 1999, the date Mellett served Fairview Riverside.¹⁴⁸ Thus, the court of appeals held, "Mellett's complaint was timely served within two years of the date that her false imprisonment cause of action accrued."¹⁴⁹

D. *The Mellett Decision*

In a unanimous opinion, the supreme court found that its decision in *Ryan* controlled whether Minnesota recognized a joint-enterprise theory of service.¹⁵⁰ As the court pointed out, there is no meaningful difference between a joint-enterprise and joint-venture. Indeed, the only difference is that a joint-venture "requires an agreement to share profits as well as a contract demonstrating the existence of the joint relationship."¹⁵¹ Thus, the court found that

143. *Id.*

144. *Id.*

145. *Id.*

146. *Mellett v. Fairview Health Services*, No. CX-00-608, 2000 WL 1376544, at *3 (Minn. Ct. App. Sept. 26, 2000).

147. *Id.* at *3 n. 1.

148. *Id.*

149. *Id.*

150. *Mellett*, 634 N.W.2d at 424.

151. *Id.*

“[b]ecause the relationship between joint-venture participants is closer than the relationship between joint-enterprise participants, the case for joint-enterprise-based service being effective for statute of limitations is even weaker than the case for joint-venture-based service.”¹⁵² Accordingly, the court reversed the court of appeals’ decision and restated the district court’s order granting Dr. Johnson’s motion for summary judgment on all counts.¹⁵³

IV. COMMENTARY

A. *Strictly Construing Minnesota’s Procedural Rules*

Prior to *Ryan* and *Mellett*, two lines of cases existed in Minnesota on how service of process rules were to be interpreted.¹⁵⁴ One line of cases indicated that service of process rules were to be interpreted broadly, while the other held that they were to be strictly construed. The Minnesota Supreme Court took the opportunity, especially in *Ryan*, to set the record straight that Minnesota’s procedural rules governing service of process are to be strictly construed. The clarity of this message was not inadvertent. In holding that service on one joint enterpriser/venturer does not constitute service on its co-enterprisers/venturers, the court arguably ignored its own precedent and that of most other jurisdictions, which at least in the context of joint ventures hold that they are analogous to partnerships and that same rules apply to them.

Additionally, in *Ryan*, the court’s ruling on the parties’ waiver arguments emphasizes how seriously the court takes service of process. JAG’s involvement in the litigation shows, if nothing else, that it had actual notice of *Ryan* and GMH’s claims. It is one thing not to recognize a joint enterprise/venture service of process rule; it is another to hold that actual notice and active participation in a lawsuit does not waive insufficient service. Indeed, it is hard to imagine how the court could have sent a clearer message to the lower courts and practitioners that service of process rules must be strictly construed. To this extent, the court’s holdings in *Ryan* and *Mellett* are advantageous because clear precedent is important and

152. *Id.*

153. *Id.* at 425.

154. *See supra* Part II.B.

Minnesota had a problem with clarity in this area.

The court also accomplished its stated goal that "Service rules should be clear; parties should not be left to guess what, under different factual scenarios, will be acceptable method of service."¹⁵⁵ Its holdings in *Ryan* and *Mellett* are straightforward: Plaintiffs must serve all members of a joint enterprise/venture. If the court held the opposite and found a joint enterprise/venture service of process rule, its application might arguably have been just as clear-cut. But it would have been a lost opportunity for the court to make a definite statement on how service of process rules should be interpreted. It also might have created additional analysis as courts wrestled with what constitutes a joint enterprise or joint venture for purposes of service.

The dissent's opinion in *Ryan* is susceptible to such criticism. Under the dissent's opinion, service of joint enterprises would require inquiry into whether service was proper on some other related agency grounds, such as family partnership, principal-agent, and common ownership. Thus, service would become a grayer area than it already is, and would be ripe for litigation. In turn, this would create further delays and confusion.

Furthermore, the court's holdings in *Ryan* and *Mellett* are easy to comply with. These holdings require personal service on all parties. While due process probably does not require this result, providing actual, formal notice has always been the preferred way of instituting an action. This fact mitigates some of the harshness of the court's ruling against GMH. As the court pointed out, the better practice in Minnesota has always been to personally serve the parties with pleadings, even when alternative service is available under the rules. It should also be noted that JAG telegraphed that it had not been personally served in its affirmative defenses, which should have set off *Ryan* and GMH's alarm bells. Obviously, *Ryan* and GMH's attorneys will not make the same mistake twice, and Minnesota practitioners are well-advised to heed to the court's message in *Ryan* and *Mellett* and to personally serve their pleadings on all parties.

B. *The Effect of Ryan and Mellett On Jurisdiction*

While *Ryan* and *Mellett* clarify how rules governing service of

155. *Ryan II*, *supra* note 1, at 188.

process should be interpreted, they raise a jurisdictional question. How will joint enterprises, comprised of both Minnesota entities and out-of-state entities, be treated if the out-of-state entity is not susceptible to service in Minnesota? In such a situation, a plaintiff could only sue the Minnesota entity for acts of the joint enterprise/venture in Minnesota. Furthermore, the Minnesota entity could not bring the party it had entered into a joint enterprise with into the Minnesota litigation. Its only recourse against its co-enterpriser would be to file suit in another jurisdiction for contribution.

It is unclear how this jurisdictional issue will impact Minnesota. On the one hand, the fact that a plaintiff cannot file suit against both joint enterprisers in Minnesota may cause a plaintiff in these circumstances to file suit elsewhere, forcing other jurisdictions to bear the cost of litigation. On the other hand, a plaintiff in such situations, especially if they are from Minnesota, may simply file suit against the Minnesota entity in Minnesota, causing the Minnesota joint enterpriser to litigate virtually identical cases in two different jurisdictions. But even if *Ryan* and *Mellett* cause plaintiffs to sue joint enterprises in other jurisdictions, it will have a negative impact on Minnesota entities involved in joint enterprises with out-of-state entities because they will still have to bear the cost of litigation in foreign jurisdictions.

V. CONCLUSION

While the full impact of *Ryan* and *Mellett* remains to be seen, those decisions will clearly have an impact on how the lower courts and practitioners in Minnesota view the rules governing service of process. The supreme court made clear that those rules are to be taken seriously and strictly construed. It did so, even though its own precedent, and that of most other jurisdictions strongly suggest that joint ventures should be treated similarly to partnerships. Moreover, the *Ryan* and *Mellett* decisions raise important questions concerning the jurisdiction of Minnesota courts over joint enterprises/ventures carried out by Minnesota and out-of-state entities in foreign jurisdictions.