

**John Doe v International Socy. For Krishna  
Consciousness, Inc.**

2024 NY Slip Op 31626(U)

May 7, 2024

Supreme Court, Kings County

Docket Number: Index No. 520637/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
KINGS COUNTY**

PRESENT: HON. SABRINA B. KRAUS PART 57

*Justice*

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INDEX NO. 520637/2021

JOHN DOE,

MOTION DATE 4/4/2024

Plaintiff,

MOTION SEQ. NO. 006

INTERNATIONAL SOCIETY FOR KRISHNA  
CONSCIOUSNESS, INC.

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 100-126, as well as all other documents filed on NYSCEF under this Index Number

were read on this motion to DISMISS

**BACKGROUND**

Plaintiff commenced this action pursuant to the Child Victims Act (“CVA”) seeking damages for alleged sexual abuse he suffered as a child by Defendant’s agents and on Defendant’s premises.

**PROCEDURAL HISTORY**

Plaintiff filed the initial summons and complaint on August 12, 2021, just days prior to the expiration of the revival window. International Society For Krishna Consciousness was the originally named Defendant.

Plaintiff filed an affidavit of service on September 12, 2021, alleging service on Defendant at 305 Schermerhorn Street, Brooklyn, NY 11217, on August 25, 2021, by delivery to Dumell Dami.

On November 8, 2021, a motion to dismiss was filed by Edward Rudofsky, Esq. The notice of motion did not identify the moving party (NYSCEF Doc # 16). The affirmation Rudofsky submitted in support of the motion stated: "I am appearing specially herein to contest the jurisdiction of the Court over the defendant unincorporated association, described in the Complaint as a "nonsectarian [sic] community." Rudofsky did not otherwise specify what entity he was appearing on behalf of in the moving papers, although in later documents he does specify that he is appearing on behalf of International Society for Krishna Consciousness, which is identified as the movant (*see eg* NYSCEF Doc # 33).

The motion sought dismissal pursuant to: CPLR 3211(a)(1); CPLR 3211(a)(2), for lack of subject matter jurisdiction; CPLR 3211(a)(5) "as barred by an Amended Plan of Reorganization dated February 16, 2005, as confirmed, and injunction and release granted by the U.S. Bankruptcy Court for the Northern District of West Virginia by Order filed May 16, 2005"; CPLR 3211(a)(7); and CPLR 3211(a)(8), for lack of personal jurisdiction over the defendant.

Plaintiff issued an amended complaint dated December 3, 2021, although same was not filed by Plaintiff on NYSCEF. The amended complaint corrected the name of the Defendant to be International Society For Krishna Consciousness, Inc, adding the previously missing "Inc." to the name in the original pleadings. The amended complaint also included information about the now correctly named corporate entity, including the location of their office in Freeport New York.

On December 10, 2021, a process server purported to serve duplicate copies of the Summons and Complaint, together with a copy of the "Amended Complaint" on the Defendant by delivery to 305 Schermerhorn Street.

On January 4, 2022, Defendant filed an additional motion seeking an order: striking the Affidavit of Service filed herein as NYSECF Doc. No. 34, on the grounds that the "Amended

Complaint"; or, in the alternative consolidating Mot. Seq. 002 with Mot. Seq. 003, and, deeming the pending motion to dismiss this action (Mot. Seq. 002) applied to the purported "Amended Complaint"; and dismissing the Complaint and purported "Amended Complaint" with prejudice.

On January 10, 2022, Plaintiff filed a motion seeking an order: pursuant to CPLR § 305(c), permitting amendment to the Summons renaming International Society for Krishna Consciousness to International Society for Krishna Consciousness, Inc.; pursuant to CPLR § 306(b), extending time for Plaintiff to serve International Society for Krishna Consciousness, Inc.; and Granting Plaintiff an Order, pursuant to CPLR § 3025(b), permitting amended to the caption.

On February 22, 2022, Plaintiff filed the amended complaint.

On April 29, 2022, Rudofsky filed a motion on behalf of non-party Krishna Consciousness of 26 Second Avenue, Inc "for an Order ... striking the affidavit of service on 'International Society for Krishna Consciousness of 26 Second Avenue Inc. sha International Society for Krishna Consciousness,' filed as NYSECF Doc. No. 44...".

Pursuant to a decision and order dated May 23, 2023, the Court (Love, J) addressed motions. The Court denied the motion to dismiss the original complaint as moot, as an amended complaint had been filed. The Court granted Defendant's motions to strike the affidavits of service but otherwise denied Defendant any other relief. Significantly, the Court granted Plaintiff's motion to amend the summons to reflect the proper name of the Defendant and extended Plaintiff's time to serve the now properly named Defendant. In doing so the Court found that Defendant was on notice of this litigation and would suffer no prejudice.

Specifically, the Court held "(h)ere, plaintiff has made multiple unsuccessful attempts to serve defendant with the Amended Summons and Complaint, including delivering the papers to

Raja (Doe) at 197 S. Ocean Avenue in Freeport and the delivery of copies of same to the Secretary of State in attempted compliance with BCL § 306. As there will be no prejudice to defendant...”.

### PENDING MOTION

On January 24, 2024, Defendant again moved for an order dismissing the amended complaint as time barred and dismissing the complaint for lack of personal jurisdiction. The motion was fully briefed, marked submitted in April 2024, and the Court reserved decision.

For the reasons set forth below the motion is denied.

### DISCUSSION

Defendant cites three arguments for dismissal of the amended complaint. The first is that service of the amended complaint occurred after the expiration of the statute of limitations, the second is that Plaintiff failed to serve the amended complaint within the 120-day extension set forth in the Court’s prior order and the third is that no amended summons was served.

On a motion to dismiss pursuant to CPLR § 3211, the court must construe all allegations in the complaint as true and resolve all inferences in favor of the plaintiff. *Island ADC, Inc. v. Baldassano Architectural Group, P.C.*, 49 A.D.3d 815, 816 (2d Dept 2008). A defendant seeking dismissal of an action as barred by the statute of limitations bears the burden of establishing that the applicable statute of limitations expired prior to the commencement of the action. *Swift v. New York Medical College*, 25 A.D.3d 686, 687 (2d Dept 2006). “Only if such prima facie showing is made will the burden then shift to the plaintiff to ‘aver evidentiary facts establishing that the case falls within an exception to the Statute of Limitations.’” *Id.*

In this case, the Defendant’s name was already properly amended to add the Inc pursuant to Judge Love’s order. While the Court order did not specifically reference that the name was amended pursuant to CPLR 1024 that was in essence what the order accomplished.

CPLR § 1024 allows for the commencement of an action against an unknown party "by designating so much of his name and identity as is known." *See generally, Orchard Park Cent. School Dist. v Orchard Park Teachers Assn.*, 50 A.D.2d 462, 467 (4th Dept, 1976). CPLR § 1024 further states, "[i]f the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly."

Here, Defendant was fairly apprised in the original Complaint that it was the intended defendant. Plaintiff's intent to name Defendant was made clear by the factual allegations contained in the original Complaint. These allegations were directed to the entity responsible for the supervision and control of the religious leaders and/or teachers on Defendant's premises who sexually abused Plaintiff between approximately 1975 to 1978. This is confirmed by the affidavit previously submitted in motion practice by Paul Kok, Defendant's "Special Duty Officer for New York City", wherein Mr. Kok confirmed Defendant was the proper party in this action, and the only Krishna entity in New York City at the time of Plaintiff's sexual abuse. Mr. Kok stated:

To the best of my knowledge, at the time of the events described in the Complaint (i.e., 1975-1978), the only ISKCON entity in New York City was the International Society for Kirishna Consciousness, Inc., a religious corporation, with a temple then located at 340 W. 55th Street, New York, New York. (Kok Aff., NYSCEF doc. No. 19, ¶ 15, p. 3).

Thus, Defendant could be the only intended party in Plaintiff's original Complaint.

Defendant acknowledges that a substitution of the correct name of a person previously identified but whose name unknown is permissible under CPLR 1024. As the Court finds that is what happened in this action, the motion to dismiss based on the expiration of the statute of limitations is denied.

***The Court Exercises its Discretion to Deem  
Plaintiff's Service of the Amended Pleading Timely***

Justice Love's order provided Plaintiff with an additional 120 days to serve Defendant with the Summons and Amended Complaint, which fell on September 22, 2023. Plaintiff served Defendant with the Summons and Amended Complaint on October 13, 2023, three weeks in excess of the time period provided in the Court's Order.

Plaintiff cites law office failure for the delay and asks the Court to exercise its discretion in deeming the late service timely pursuant to CPLR § 2004 which provides "(e)xcept where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed."

In determining "good cause," courts consider the length of the delay, the reason given for the delay, and any prejudice to the opposing party caused by the delay [*see e.g., Tewari v. Tsoutsouras*, 75 NY2d 1 (1989); *A & J Concrete Corp. v. Arker* 54 N.Y.2d 870 (1981)].

Plaintiff cites law office failure as the reason the service of the amended pleading was three weeks late. In *Tewari v. Tsoutsouras*, *supra*, the Court of Appeals accepted law office failure as a viable basis for good cause under CPLR 2004 and on that basis excused counsel's delayed filing of a notice of medical malpractice action (CPLR 3406). The court wrote: "[T]he Legislature has held that upon a motion to extend the time to appear or plead (CPLR 3012) or to vacate a default (CPLR 5015(a)), the court may excuse a delay or default resulting from 'law office failure' (CPLR 2005). We see no reason to impose a more stringent requirement for the showing of 'good cause' under CPLR 2004." 75 N.Y.2d at 12-13, 550 N.Y.S.2d at 577, 549 N.E.2d at 1148.

After *Tewari*, other courts have not hesitated to consider law office failure in the CPLR 2004 analysis. *See, e.g. Levine v. Levine* 179 A.D.2d 625, 579 N.Y.S.2d 103 (2d Dept, 1992) (law office failure provided proper basis to extend time for compliance with rule requiring submission of judgment or order for judge's signature); *Smith v. Mousa* 305 A.D.2d 313 (1st Dept, 2003) (without characterizing cause for delay as law office failure, court nevertheless excused counsel's "oversight," which resulted in failure to comply with court's scheduling order, and granted extension of time for conducting medical examination of personal injury plaintiff). N.Y. C.P.L.R. 2004 (McKinney).

In the case at bar, Plaintiff has identified the law office failure which led to service happening late, the three weeks is not an excessive period of time, there is no discernible prejudice to Defendant and our jurisprudence favors a resolution of actions on the merits.

***Plaintiff Did Serve An Amended Summons***

Defendant's final argument in its motion to dismiss is that service was defective because Plaintiff failed to file and serve an amended summons. However, this is inaccurate. Though the caption did not reflect the summons as "amended", the contents of the summons do in fact name Defendant "International Society for Krishna Consciousness, Inc."

The substance of the summons served on Defendant is accurate and satisfies the requirements of CPLR §305(a). Plaintiff's summons displays the correct venue and basis of venue, index number, date of filing with the clerk, and names International Society for Krishna Consciousness, Inc. as the correct entity being sued in this lawsuit. The fact that it was not labeled as an amended summons does not warrant a different result.

WHEREFORE it is hereby:

ORDERED that the motion to dismiss is denied in its entirety; and it is further



ORDERED that Defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual compliance conference in, on June 3, 2024 , at 2 PM.

This constitutes the decision and order of the Court.

May 7, 2024  
DATE

  
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HON. SABRINA KRAUS

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				