

Uhill v St. Francis Hosp.

2007 NY Slip Op 30478(U)

March 27, 2007

Supreme Court, Queens County

Docket Number: 0000067/2006

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IA Part 14
Justice

CLINTON UHILL x Index
2006 Number 67

2006 - against - Motion
Date December 5,

ST. FRANCIS HOSPITAL, et al. Motion
Cal. Number 30

x Motion
Seq. Number 2

The following papers numbered 1 to 19 read on this motion by defendant St. Francis Hospital (Hospital) to dismiss plaintiff's complaint for failure to properly serve defendant Hospital within the applicable statute of limitations; and on this cross motion by plaintiff for leave to extend the time to serve defendant Hospital pursuant to CPLR 306-b.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-5
Notice of Cross Motion - Affidavits - Exhibits ...	6-9
Answering Affidavits - Exhibits	10-16
Reply Affidavits	17-19

This motion was submitted to Justice Geller on December 5, 2006 and was transferred to this court due to the expiration of her term.

Upon the foregoing papers it is ordered that the motion and cross motion are determined as set forth herein.

Plaintiff commenced this action for medical malpractice and lack of informed consent involving a coronary procedure which was performed at defendant Hospital on July 5, 2003, by filing a summons with notice with the court on January 3, 2006, two days before the expiration of the statute of limitations. Within 120 days thereof, plaintiff served a summons with notice on defendant Hospital by serving an individual at the medical records department on May 1, 2006. The Hospital served a notice of appearance and demand for service of the complaint upon plaintiff on May 10, 2006. Plaintiff served a complaint on the Hospital's counsel on June 7, 2006. Defendant Hospital interposed an answer on June 21, 2006, asserting affirmative defenses of lack of jurisdiction due to improper service and statute of limitations. Defendant served the instant motion to dismiss on August 15, 2006. Plaintiff cross-moved for leave to extend the time for service on October 23, 2006, almost five months after plaintiff served defendant Hospital with the summons with notice.

Herein, defendant Hospital contends that it was not properly served because the individual served in the medical records department was not "an officer, director, managing or general agent, or cashier or assistant cashier or ... another agent authorized by appointment or by law to receive service" (CPLR 311[a][1]).

CPLR 306-b permits the courts to extend a plaintiff's time to serve a summons and complaint upon good cause shown or in the interest of justice. These are two distinct standards (de Vries v Metropolitan Tr. Auth., 11 AD3d 312 [2004]; see Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 104-105 [2001]). "The interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties" (Leader v Maroney, Ponzini & Spencer, 97 NY2d at 105). To establish the requisite good cause, reasonable diligence in attempting service must be shown, but the interest of justice is a broader standard, which does not require a showing of good cause, and permits the court to consider many factors (Mead v Singleman, 24 AD3d 1142 [2005]). Upon a consideration of the relevant factors, the court concludes that an extension of time to re-serve defendant Hospital is warranted. Service, albeit defective, was timely made within the 120-day period, the statute of limitations has since expired and there is no legal prejudice to the Hospital, who had actual notice of the action (Spath v Zack, 2007 NY Slip Op 42, 3 [2007]; Chiaro v D'Angelo, 7 AD3d 746, 776 NYS2d 898 [2004]; Earle v Valente, 302 AD2d 353 [2003]; Seon Uk Lee v Corso, 300 AD2d 385 [2002]; Citron v Schlossberg, 282 AD2d 642 [2001]).

Accordingly, defendant Hospital's motion to dismiss plaintiff's complaint is denied. Plaintiff's cross motion for

leave to extend the time to serve defendant Hospital is granted. Plaintiff's time to serve the defendant St. Francis Hospital is hereby extended 60 days from the entry date of this order.

Dated: March 27, 2007

J.S.C.