

Hook v Saturn Trans. Corp.

2007 NY Slip Op 33890(U)

November 27, 2007

Supreme Court, New York County

Docket Number: 0104133/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.
Justice

PART 10

HOOK

INDEX NO. 104133/07

- v -

SATUR N

MOTION DATE _____

TRANS. CORP

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

FILED

DEC 03 2007

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

Dated: 11/27/07

JUDITH J. GISCHE, J.S.C. *J.S.C.*

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----x
KEN HOOK,

Plaintiff,

-against-

SATURN TRANS. CORP., ALL TAXI
MANAGEMENT INC., and GURINDER SINGH,

Defendants,
-----x

Decision/Order

Index No.: 104133/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's OSC w/GAW affirm in support, exhs

Def's opp w/MIW affirm in support, exhs

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DEC 03 2007
NEW YORK
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Numbered

1

2

-----x
Upon the foregoing papers the decision and order of the Court is as follows:

In this action, plaintiff seeks damages for the alleged denial of access to a public accommodation. Plaintiff now seeks leave to extend the time for serving defendant Gurinder Singh ("Singh"). Issue has been joined with respect to defendants Saturn Trans. Corp. ("Saturn") and All Taxi Management, Inc. ("All Taxi"). Saturn and All Taxi join in opposing the instant motion.

The action was filed and commenced on March 27, 2007. In the complaint, plaintiff alleges that Singh, a taxi cab driver, refused plaintiff access to the cab because plaintiff had with him a guide dog. Plaintiff is legally blind. Plaintiff has also asserted claims against Saturn and All Taxi, owner of and agent for the taxi, under the doctrine of *respondeat superior*.

Plaintiff now claims that despite exercising due diligence, he has been unable to obtain Singh's home address. Plaintiff made a FOIL request to the New York City Taxi and Limousine Commission ("TLC") and conducted "a search of data from the TLC," however, the TLC redacted the home address and telephone number of the individual defendant. Plaintiff has been unable to ascertain information sufficient to effectuate service on Singh.

Plaintiff also states that, in the interests of justice, the instant motion should be granted because the action is now barred by the statute of limitations against Singh. Plaintiff has also provided a Notice of Summons Disposition from Consumer Adjudications of the TLC, whereby an Administrative Law Judge found the Singh violated several TLC Rules in connection with plaintiff's allegations.

Saturn and All Taxi contend that plaintiff has not exercised due diligence in attempting to serve Singh because plaintiff has not demonstrated that he has made any effort to serve Singh since the commencement of this action. The appearing defendants also argue that they will be prejudiced if the extension of time to serve defendant Singh is granted, although they do not explain how such relief will prejudice them.

CPLR § 306-b provides that "[i]f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or *upon good cause shown or in the interest of justice*, extend the time for service" (emphasis added). An extension of time for service is a matter within the court's discretion.

The good cause standard requires a showing of due diligence regarding service

[* 4]
of the complaint. Slate v. Schiavone Const. Co., 10 A.D.3d 1 (1st Dept. 2004). The interest of justice standard allows the court to consider diligence as "simply one of many relevant factors" Leader v. Maroney, Ponzini & Spencer, 97 N.Y.2d 95 (2001). The court has discretion "to accommodate late service that might be due to mistake, confusion or oversight." Leader, supra at 104-105.

The court notes that there appears to be a valid discrimination claim arising from Singh's alleged actions. There is no dispute that plaintiff would be severely prejudiced if he were not granted relief under CPLR § 306(b) in that his action would be barred and he would be deprived of the opportunity to seek redress for his injuries from Singh. Moreover, Saturn and All Taxi have not demonstrated any prejudice if the instant motion was granted. Prejudice is demonstrated by an impairment of a party's ability to defend on the merits. The loss of a procedural advantage, such as the expiration of the statute of limitations, does not necessarily constitute prejudice to the defendants. See Slate v. Schiavone Const. Co., supra.


Accordingly, the court grants the motion to the extent that the time for service of process of the complaint on Singh is extended until January 28, 2007.

Any relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
November 27, 2007

So Ordered:


HON. JUDITH J. GISCHE, J.S.C.

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