

**Venetian v Prudential Ins. Co. of Am.**

2009 NY Slip Op 32460(U)

October 19, 2009

Supreme Court, New York County

Docket Number: 106107/08

Judge: Doris Ling-Cohan

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

PRESENT: Hon. Doris Ling-Cohan  
Justice

PART 36

Index Number : 106107/2008  
VENETIAN, CHERYL ANN  
VS.  
PRUDENTIAL INSURANCE CO. OF AMERICA  
SEQUENCE NUMBER : # 001  
EXTEND TIME

INDEX NO. 106107-08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. #001  
MOTION CAL. NO. \_\_\_\_\_

\_\_\_\_\_ ere read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1, 2, 3  
6  
4, 5

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 and cross motion are  
decided to the extent set forth in the attached  
memorandum decision.

**FILED**  
OCT 23 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

**HON. DORIS LING-COHAN**

Dated: 10/19/09



J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 36

-----X  
 CHERYL ANN VENETIAN, :  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 THE PRUDENTIAL INSURANCE COMPANY :  
 OF AMERICA, ABDUL R. CHAUNHRY, as Parent :  
 and Natural Guardian of Rahman A. Chaundry and :  
 Shereen I. Chaundry, Both Infants Under the Age of 18, :  
 Defendants. :  
 -----X

Index No. 106107/08  
Motion Seq. No. 001

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COUNTY CLERK'S OFFICE  
NEW YORK

**DORIS LING-COHAN, J.:**

Plaintiff Cheryl Ann Venetian moves for an order: (1) declaring service on defendant Abdul R. Chaundry ("Chaundry"), as parent and natural guardian of Rahman A. Chaundry and Shereen I. Chaundry, to be timely *nunc pro tunc*, pursuant to CPLR 306-b; (2) granting a default judgment against defendant Chaundry, pursuant to CPLR 3215; and (3) directing defendant The Prudential Insurance Company of America ("Prudential") to pay plaintiff her one-third share of the \$1 million death benefit from a life insurance policy issued on the life of her mother, Denise Chaundry, now deceased, plus pre-judgment interest from January 28, 1999. In the alternative, if service is deemed defective, plaintiff moves for an order granting plaintiff a further extension of time to serve defendant Chaundry. Prudential cross-moves for an order: (1) permitting it to deposit the death benefit proceeds into the Court, pursuant to CPLR 1006(g); (2) fully discharging Prudential from any liability, pursuant to CPLR 1006(f); (3) dismissing Prudential from the action with prejudice; and (4) reimbursing Prudential for attorneys' fees and costs.

This is an action to recover life insurance proceeds. In December 1998, plaintiff's

mother, Denise Chaundry, obtained a \$1 million life insurance policy from Prudential (the "Policy"). Plaintiff alleges that her mother's intention was to list all three of her children, plaintiff, Rahman Chaundry and Shereen Chaundry, as equal beneficiaries of the Policy. However, plaintiff alleges that, prior to the Policy being issued, defendant Chaundry, plaintiff's mother's husband, altered the beneficiary designation and removed plaintiff from the list of beneficiaries. On January 28, 1999, Denise Chaundry was killed while visiting Pakistan with defendant Chaundry.

On May 1, 2008, plaintiff commenced this action to recover her alleged one-third share of the life insurance benefits under the Policy and served both defendants. While Prudential served an answer on January 15, 2009, to date, defendant Chaundry has not answered and he has defaulted on this motion/cross motion.

Pursuant to CPLR 306-b, service of the summons and complaint on a defendant shall be made within 120 days of the filing of the summons and complaint. If service is not made within such time period, the court, within its discretion, may extend plaintiff's time to serve the summons and complaint "upon good cause shown or in the interest of justice." CPLR 306-b. To demonstrate good cause, a plaintiff must show that reasonable diligence was exercised in attempting to timely serve a defendant. *Jordan v City of New York*, 38 AD3d 336, 339 (1st Dep't 2007). Alternatively, an extension of time request sought in the interests of justice does not require diligent attempts at service as a threshold matter. *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105 (2001). Other factors may be considered, such as the expiration of the Statute of Limitations, whether plaintiff has a meritorious action, the length of delay in service and in plaintiff's request for an extension, and prejudice to defendant. *Id.* at 105-06.

Upon review of the submissions and upon good cause shown, plaintiff's motion is granted solely to the extent that plaintiff seeks an extension of time to serve defendant Chaundry, and plaintiff is directed to serve Chaundry on behalf of his minor children, pursuant to CPLR 309, at 62 Del Rey Drive, Mount Vernon, New York, within 60 days. In all other respects, the motion is denied, without prejudice for plaintiff to re-file a motion for default judgment against defendant Chaundry, within 45 days of Chaundry's time to answer or move having expired, subsequent to plaintiff re-serving defendant as provided herein.

In plaintiff's moving papers, plaintiff has detailed steps undertaken to locate defendant Chaundry, after being informed that Chaundry and his minor children were in the process of moving from the residence where Chaundry was initially served: (1) a private investigator was retained; (2) a New York State Department of Motor Vehicles search and other public records searches were conducted; and (3) service was attempted at both the old and new address and at Chaundry's alleged place of business. Such efforts make it clear that plaintiff has attempted, in due diligence, to serve defendant, to no avail. Thus, plaintiff has set forth sufficient facts to establish good cause and allow plaintiff additional time to serve defendant Chaundry.

With regard to the cross motion by Prudential, such motion is denied at this juncture as premature. CPLR 1006(f) provides that a stakeholder may move for an order discharging the stakeholder from liability only after the time for all parties to plead has expired. As plaintiff has been granted an extension of time to serve defendant Chaundry, his time to plead has not yet expired and Prudential may re-file such motion after such time.

Accordingly, it is

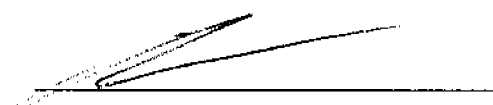
ORDERED that plaintiff's motion is granted solely to the extent that plaintiff is granted an extension of time to serve defendant Abdul R. Chaundry, as parent and natural guardian of Rahman A. Chaundry and Shereen I. Chaundry, pursuant to CPLR 309, within 60 days, and denied in all other respects, without prejudice for plaintiff to re-file a motion for default judgment against Chaundry within 45 days if he fails to timely answer or move after such service; and it is further

ORDERED that defendant Prudential's cross motion is denied, without prejudice for Prudential to re-file such motion if Chaundry fails to timely answer or move after service by plaintiff as described above; and it is further

ORDERED that **counsel shall appear for a preliminary conference, on December 9, 2009 at 10:00 AM in Room 428, 60 Centre Street, New York, New York;** and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon all parties.

Dated: 10/19/09

  
Hon. Doris Ling-Cohan, J.S.C.

J:\Extend Time\Venetian.Prudential, extension of time to serve, CPLR 306-b.wpd

**FILED**  
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