

**Solomons v Douglas Elliman LLC**

2012 NY Slip Op 30929(U)

April 9, 2012

Sup Ct, New York County

Docket Number: 110636/2010

Judge: Judith J. Gische

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

-----X  
PAUL SOLOMONS,

Plaintiff,

-against-

**Decision/Order**

Index No. 110636/2010

Seq No.: 009

DOUGLAS ELLIMAN LLC d/b/a PRUDENTIAL  
DOUGLAS ELLIMAN, SAN HUNIE KWON,  
ELIPARK REALTY CORP., GEORGE  
ABI-HASSOUN, CITY CONNECTIONS REALTY  
INC., 23 MANHATTAN VALLEY NORTH LLC,  
BARUCH SINGER, RANDY BARUH, AIM  
REALTY SERVICES INC., TARIQ HAKEEN, OLD  
BROWNVILLE RENAISSANCE CORP., STEPHAN  
B. GLEICH, ERIK RODRIGUEZ, 650 WEST 189  
LIMITED PARTNERSHIP., BRIAN RITTER,  
BEST APARTMENTS, INC., BEST  
APARTMENTS NORTH, INC., HOWARD  
FEINGOLD, JOSEPH BRANCO, CITY SITES  
MARKETING INC. d/b/a CITY SITES NEW  
YORK, SCOTT HAKIM and BRIAN DUSSEAU,

Present:

Hon. Judith J. Gische, JSC

Defendants.  
-----X

**FILED**

APR 18 2012

COUNTY CLERK'S OFFICE  
NEW YORK

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

| <b>Papers</b>  | <b>Numbered</b> |
|--|-----------------|
| Motion Sequence No. 009                                    |                 |
| Gleich's n/m (dismiss) w/GAL affirm, SBG affid, exhs ..... | 1               |
| Pltf's opp w/AM affirm, exhs .....                         | 2               |
| Gleich's reply w/GAL affirm, exhs .....                    | 3               |

**Gische J.;**

This is an action for housing discrimination based on a disability, a violation of the Administrative Code of the City of New York § 8-107 (5). Presently before the court is a motion by defendant Stephan B. Gleich ("Gleich") to have this action dismissed on the basis that he was not served with the summons and complaint although this action

was commenced in August 2010 (CPLR § 3211 [a][1]). Gleich also contends the complaint fails to state a cause of action as to him (CPLR 3211 [a][7]) and, therefore, the court should not extend plaintiff's time to serve for that reason. Finally, Gleich points out that although plaintiff opposes this motion, plaintiff has not cross moved for more time to serve.

A prior decision and order by this court (Order, Gische J., 12/13/10) denying Old Brownsville Renaissance Corp.'s ("OBRC") pre-answer motion to dismiss was appealed. The crux of Gleich's motion is that plaintiff had ample time to serve him but failed to. Gleich contends further that the complaint fails to state a cause of action against him because, among other things, the building does not have at least six (6) units and, therefore, outside the scope of the New York City Human Rights Law. Thus, Gleich surmises that plaintiff is trying to circumvent the stay against OBRC obtained pending appeal. For the reasons that follow, Gleich's motion to dismiss is denied.

The statute of limitations has not run on plaintiff's claim. In fact Gleich acknowledges that even if this case is dismissed, plaintiff will bring a new action against him. His rationale for why this is a better course of action than allowing for late service is that he will not be "lumped together with unrelated parties and unrelated allegations." This argument is made despite the fact that Gleich is admittedly an officer of OBRC.

Although Gleich had actual knowledge of this action, he nonetheless argues that he will be prejudiced if this action is not dismissed against him. The "prejudice" he cites is that he has not participated in any of the discovery conferences in this case and that he would have to defend the charges against him. These statements do not, however, demonstrate "prejudice."

Plaintiff's attorney provides her affirmation explaining the delay in serving Gleich. She states she reached out to Gleich when OBRC was served and relied on his representation that he was not a proper party because someone else by the name of "Robert Travin" was the person who should be a named defendant. Mr. Travin is now deceased and the emails exchanged between plaintiff's attorney and Gleich shows he may have led plaintiff's counsel to believe he was not a proper party. In his sworn affidavit, Gleich does not dispute any of these statements made by plaintiff's attorney.

Plaintiff has already indicated that were the court inclined to dismiss this action he would commence a new action against Gleich. Since the two cases would involve common questions of law or fact, this court would favorably consider a motion for consolidation were it made (CPLR 602 [a]). The salutary goal of CPLR 602 to avoid unnecessary costs and delay (CKS Ice Cream Co., Inc. v. Frusen Glade Franchise, Inc., 172 AD2d 206 [1<sup>st</sup> Dept 1991]). An important consideration in deciding to consolidate cases is also judicial economy. Consequently, allowing plaintiff to now serve the complaint would, as a practical matter, avoid the inevitable motion to consolidate, which even Gleich anticipates would be made and granted.

Gleich contends that this case is without merit because the building has fewer than six units. Gleich further claims that this is the same subject matter as OBRC's appeal and, that by keeping him in this action, plaintiff is attempting to circumvent the appellate stay on plaintiff proceeding against OBRC. This argument is wholly disingenuous given Gleich's insistence that he stands apart from OBRC and the claims against that company. In any event, OBRC's appeal was recently decided (April 4, 2012) and this court's prior order was affirmed (Solomon v. Douglas Elliman, LLC,

—Misc3d—, 2012 NY Slip Op 02577 [1<sup>st</sup> Dept 2012]). In affirming this court, the Appellate Division wrote that "OBRC's dismissal motion was properly denied because, at this stage, neither Travin's affidavit nor the certificate of occupancy is sufficient to rebut plaintiff's claim that the subject building contains at least six units...the 22-year-old certificate of occupancy does not conclusively prove how many apartments were in the building when plaintiff tried to rent in it."

Plaintiff has not served a cross-motion to extend his time to serve Gleich. Affirmative relief will ordinarily not be granted to the party responding to the motion in chief, even if such relief is addressed in opposition (see Guggenheim v. Guggenheim, 109 A.D.2d 1012, 1013 [3<sup>rd</sup> Dept 1985]).

Given the unique circumstances of this case, but also taking into consideration that plaintiff did not cross move for an extension of time to serve his complaint, Gleich's motion to dismiss is denied provided, however, that plaintiff brings the appropriate motion to extend his time to serve the complaint. **Such motion must be served no later than Thirty (30) Days after this declslon/order appears scanned into SCROLL.** Should plaintiff fail to comply with this order, Gleich may renew his motion to dismiss.

#### **Conclusion**

It is hereby

**ORDERED** that Gleich's motion to dismiss is denied for the reasons stated; and it is further

**ORDERED** that plaintiff must move within the time provided otherwise Gleich may renew his motion; and it is further

ORDERED that any relief requested but not addressed is hereby denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York  
April 9, 2012

So Ordered:

  
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Hon. Judith J. Gische, JSC

**FILED**  
APR 11 2012  
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