

**Board of Mgrs. of the Spencer Condominium v  
Hazan**

2013 NY Slip Op 31827(U)

August 8, 2013

Supreme Court, New York County

Docket Number: 154149/2012

Judge: Eileen A. Rakower

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

PRESENT: **HON. EILEEN A. RAKOWER**  
*Justice*

PART 15

Index Number : 154149/2012  
BOARD OF MANAGERS OF THE  
vs.  
HAZAN, ELIZABETH  
SEQUENCE NUMBER : 003  
EXTEND TIME

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

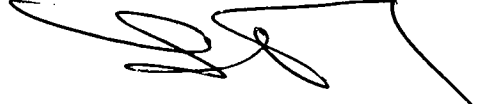
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1, 2  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 3  
Replying Affidavits \_\_\_\_\_ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.**

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

Dated: 8/8/13

  
\_\_\_\_\_, J.S.C.

**HON. EILEEN A. RAKOWER**

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: .....MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X

BOARD OF MANAGERS OF THE SPENCER  
CONDOMINIUM,

Index No.  
154149/2012

Plaintiff,

- against -

**DECISION AND  
ORDER**

Mot. Seq. 003

ELIZABETH HAZAN, RAYMOND HOULE, and  
9221-0228 QUEBEC, INC., and "JOHN  
DOE" NO. 1 THROUGH "JOHN DOE" NO. 15,  
the true names of said defendants being unknown  
to Plaintiffs, the parties intended to be those persons  
having or claiming an interest in the mortgaged  
premises described in the complaint by virtue  
of being tenants, occupants, or judgment-creditors,  
or lienors of any type or nature in all part of  
said premises,

Defendants.

-----X

EILEEN A. RAKOWER, J.S.C.

This within Foreclosure Action was commenced by Plaintiff as a result of Defendants' alleged breach of the Declaration/By-Laws, due to their alleged failure to pay common charges and other monthly charges dating back to January 2008. Plaintiff brings this motion: (a) pursuant to CPLR §308(5) and §311(b), permitting Plaintiff to serve Defendants, Raymond Houle ("Houle") and 9221-0228 Quebec, Inc. ("collectively, Defendants") with the summons and complaint by a means other than one set forth under CPLR §301(1) through (4) and CPLR §311(a)(1) through (8); and (b) extending the period of time for Plaintiff to file an affidavit of service with the court, following the alternate service upon Defendants Houle and 9221-0228 Quebec, Inc. beyond the 120 day limit set forth in CPLR §306(b).

Defendant Elizabeth Hazan (“Hazan”) purchased Unit 1A within the building located at 1 East 62<sup>nd</sup> Street, New York, NY. On August 15, 2011, Hazan allegedly gifted the unit to Raymond Houle. Houle is a Canadian citizen who, except for the subject premises, has no ties to the State of New York. On December 9, 2011, Houle allegedly gifted the unit to 9221-0228 Quebec, Inc.

On August 21, 2012, a licensed process server approached Defendant Hazan within the lobby of the building located at 1 East 62<sup>nd</sup> Street, New York, NY and served Hazan with a copy of the summons and complaint. Plaintiff intended this as service upon Defendant 9221-0228 Quebec, Inc., as it understood Hazan to be an “agent” of the Defendant corporation.

Following a May 7, 2013 traverse hearing, the Court deemed that service upon Hazan was sufficient in her individual capacity. It also found that service had not been completed upon 9221-0228 Quebec, Inc., as there was no testimony that a separate service upon the corporation was made, nor was there any testimony that two sets of papers were served on Hazan or that the process server asked Hazan if she was authorized to accept service on behalf of the corporation. The complaint was dismissed without prejudice as to 9221-0228 Quebec, Inc.

As alleged by Plaintiff, 9221-0228 Quebec, Inc. is a Canadian corporation that is not registered with the Secretary of State of the State of New York. Plaintiff asserts that it searched the “Canadien [sic] equivalent of the Secretary of State of New York State” to locate the address of 9221-0228 Quebec, Inc. at which Plaintiff would be able to serve the corporation and its President. The February 2013 report listed 9221-0228 Quebec, Inc.’s address as 11020 Armand-Lavergne, Montreal-North, Quebec. Additionally, an affidavit submitted on November 12, 2012, on behalf of 9221-0228 Quebec, signed by its President Houle, listed the business location as 112020 Armand-Lavergne. However, Plaintiffs were unable to serve either party at either of these two addresses.

On November 29, 2012, Plaintiff attempted to serve 9221-0228 Quebec, Inc. and Houle at another address: 3765 St-Kevin, Apt 9, Montreal, Quebec, Canada. However, upon attempting to serve Defendants at that address, Plaintiff alleges to have learned that Houle had moved from that address in July 2012, and did not leave a forwarding address. Thus, Plaintiffs have been unable to locate 9221-0228 Quebec, Inc. and Houle.

With regard to service upon Houle, CPLR §308(5) states that “Personal service upon a natural person shall be made by any of the following methods”:

(5) in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two or four of this section.

Regarding service on 9221-0228 Quebec, Inc., CPLR §311(b), “Personal service upon a corporation or governmental subdivision”, provides:

(b) If service upon a domestic or foreign corporation within the one hundred twenty days allowed by section three hundred six-b of this article is impracticable under paragraph one of subdivision (a) of this section or any other law, service upon the corporation may be made in such manner, and proof of service may take such form, as the court, upon motion without notice, directs.

When service is impractical by traditional means, the Court is permitted to fashion a means of service which are reasonably calculated to provide the party with notice of the action. (*Tremont Fed Sav. & Loan Assoc. v. Ndanusa*, 144 A.D.2d [1<sup>st</sup> Dept 1968]; *Franklin v. Winard*, 189 A.D.2d 717 [1<sup>st</sup> Dept 1993]).

Here, Plaintiff has provided evidence of its efforts to locate both Defendants Houle and 9221-0228 Quebec, Inc. These efforts have proven to be ineffective as a result of Defendants having moved from the listed address, without providing any forwarding address.

As such, Plaintiffs shall serve Defendants 9221-0228 Quebec, Inc.’s Attorney and Houle’s Attorney, Darius A. Marzec, Esq., of Marzec Law Firm, P.C. at 225 Broadway, Suite 3000, New York, NY 10007, with two copies of the verified summons and complaint, and an additional mailing to each at the subject premises.

CPLR §306-b provides that “[i]f service is not made upon a defendant within the [120-day period] provided in this section, the court, upon motion, shall dismiss the action without prejudice... or upon good cause shown or in the interest of justice, extend the time for service.” Determining whether to grant an extension

on this ground “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 N.Y.2d 95 [2001]). A plaintiff who seeks such an extension is not required to establish that diligent efforts to effect timely service were made, but diligence may be considered “along with any other relevant factors.. Including expiration of the [s]tatute of limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of plaintiff’s request for the extension of time, and prejudice to defendant.” (*Id.* at 105-106; see, *Matter of Palmateer v. Greene County Indus. Dev. Agency*, 38 A.D.3d 1087 [2007]).

Here, service was required to be made on Defendants no later than October 27, 2012, 120 days after the summons with notice was filed. Defendants made attempts at service but have been unable to ascertain Houle or Quebec 9221-0228's location. Plaintiffs brought their motion to extend the time for service, less than thirty days after the 9221-0228 Quebec, Inc. traverse hearing which deemed service upon 9221-0228 Quebec, Inc. insufficient. Finally, the existence of a meritorious cause of action has been established in that Plaintiffs have attached a ledger which shows that through May 31, 2013, Defendants owe 65 months of common charges, base rent, assessments and late fees, in the total amount of \$197,658.28. Accordingly, an extension of time to serve Defendants 9221-0228 Quebec, Inc. and Houle is proper.

Wherefore, it is hereby,

ORDERED that Plaintiffs may serve Defendants 9221-0228 Quebec, Inc. and Raymond Houle by service on their attorney Darius A. Marzec, Esq., of Marzec Law Firm, P.C. at 225 Broadway, Suite 3000, New York, NY 10007, with an additional mailing to 1 East 62<sup>nd</sup> Street, New York, NY; and it is further,

ORDERED that Plaintiff has 30 days from the date of this decision to file an affidavit of service with the court.

This constitutes the decision and order of the court. All other relief requested is denied.

**Dated: August 8, 2013**



*J.S.C.*

Check one:      **FINAL DISPOSITION**    **X**    **NON-FINAL DISPOSITION**

Check if appropriate:     **DO NOT POST**     **REFERENCE**