

**Zaprianov v Johndale, Inc.**

2014 NY Slip Op 33183(U)

November 6, 2014

Supreme Court, Bronx County

Docket Number: 15062/2001

Judge: Mark Friedlander

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NEW YORK SUPREME COURT - COUNTY OF BRONX  
PART IA-25

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ATANAS ZAPRIANOV,

Plaintiff,

**MEMORANDUM DECISION/ORDER**

Index No.: 15062/2001

-against-

JOHNDALE, INC.

Defendant.

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HON. MARK FRIEDLANDER

Defendant, Johndale, Inc. ("Johndale"), moves for an order, pursuant to CPLR§3211(a)(5), dismissing plaintiff's verified amended complaint on the ground that it is time barred. The motion is decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained February 20, 1999, as a result of his falling off a ladder.

The procedural history as recited in the decision/order of Justice Stanley Green, dated January 7, 2014, in vacating a default judgment in favor of plaintiff and against defendant, is as follows:

"Plaintiff served the defendant by service of the Secretary of State on May 1, 2001. Defendant did not answer and plaintiff moves for a default judgment. That motion was granted by Justice Victor on March 4, 2002. Plaintiff filed a Note of Issue, dated April 5, 2002, on August 15, 2002. An inquest was held on April 25, 2007 and a decision rendered on April 27, 2001, awarding plaintiff \$250,000.00. Plaintiff did not submit a judgment until January 5, 2011. Judgment was entered on January 10, 2011. Another two and one-half years passed until plaintiff prepared an Execution with Notice to Garnishee on July 15, 2013 and delivered to the Sheriff's Office, Westchester County on July 18, 2013. The Sheriff sent it to Johndale, Inc., 80 Business Drive, Armonk, N.Y. 10504. Defendant submitted this Order to Show Cause for signing on November 8, 2013 and it was signed on November 13, 2013."

In vacating defendant's default, Justice Green stated:

“Further, even if defendant did receive the Summons and Complaint from the Secretary of State, which it denies, it had a reasonable excuse for not answering it. The complaint alleges that the plaintiff fell off a ladder on property located at 186 Mamaroneck Road, Mamaroneck, New York. Defendant owns property at 18 (*sic*) Mamaroneck Road (*sic*) in White Plains, not Mamaroneck. Plaintiff now contends that the incorrect address was merely a typographical error, although he does not now, and has never, moved to amend his complaint to reflect the correct address. Thus the complaint is defective in that it contains an inaccurate allegation and the inquest was based on incorrect information.”

Justice Green placed the wrong street number in his decision. The original complaint correctly identified the street number as 186, which is the number at the property owned by defendant. Also, Justice Green did not note that the original complaint erred in referring to Mamaroneck Road, in that defendant's property is on Mamaroneck Avenue.

In his decision/order vacating the default judgment, Justice Green directed plaintiff to serve a copy of the 2001 summons and complaint on defendant's counsel and directed defendant to serve an answer within twenty days of receipt thereof. Plaintiff served defendant with a copy of the original summons and complaint. Defendant served an answer, consisting of general denials, and affirmative defenses, including that it did not own and never owned the property located at 186 Mamaroneck Road, Mamaroneck, New York, and the defense of statute of limitations. Plaintiff then served an amended verified complaint, which stated that the address of the property at which plaintiff was injured was 176-186 Mamaroneck Avenue, White Plains, New York. Defendant served an answer to the amended verified complaint, admitting it was the owner of 176-186 Mamaroneck Avenue, White Plains, New York, and again asserting the statute of limitations as an affirmative defense.

Defendant now moves to dismiss plaintiff's amended verified complaint on the ground

that plaintiff's claim is barred by the statute of limitations. In essence, defendant argues that the alleged "typographical error" in the original complaint so misidentified the address at which the alleged accident took place as to give no notice of the transaction or occurrence, which would preclude amendment of the complaint pursuant to CPLR§203(f). Defendant further argues that to permit the complaint to be amended, almost 14 years after the filing of the original summons and verified complaint, is unduly prejudicial. While it cannot be gainsaid that plaintiff's attorney was unusually lax in prosecuting this matter, there are reasons for denying the motion.

Plaintiff's original complaint alleges that defendant violated Section 240 of the Labor Law. More specifically, plaintiff claims that, on February 20, 1999, he sustained personal injuries while working on defendant's premises, located at 186 Mamaroneck Road, Mararoneck, New York, when a ladder he was working on toppled. The Court finds that, although the actual location was somewhat misidentified in the original complaint, that address was sufficient to put defendant on notice of plaintiff's claim. Unlike an allegation of a defective sidewalk, where the precise location is critical, plaintiff's misidentification of the actual location of the accident did not deprive defendant of an opportunity to conduct a proper and meaningful investigation of plaintiff's Labor Law claim. The distinction between road and avenue is not substantial enough to support a claim of lack of notice. Further, the Westchester County cities and/or villages of White Plains and Mamaroneck are so close to each other (with Mamaroneck Avenue running through both) so as to preclude confusion. Defendant is presumed to know what properties it owns and the misidentification of the town where the accident occurred did not deprive defendant of notice of the accident.

While defendant alleges prejudice, it fails to articulate precisely how it was prejudiced.

Further, the length of time that elapsed was already considered by Justice Green, who addressed it by vacating the default, not dismissing the action. At this point, the Court sees no articulated basis for going further and dismissing the claim.

Defendant's motion is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: 11/6/14

  
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MARK FRIEDLANDER, J.S.C.