

<b>Country-Wide Ins. Co. v Walker</b>
2016 NY Slip Op 30551(U)
March 29, 2016
Supreme Court, New York County
Docket Number: 160338/14
Judge: Kathryn E. Freed
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 2

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

-against-

JANAII WALKER

("Eligible Injured Party Defendant"),

And

CAPOLINO OF NEW YORK CITY  
CHIROPRACTIC, P.C., EAST ATLANTIC  
ACUPUNCTURE P.C., PROMPT MEDICAL  
SERVICES, P.C., ARS MEDICAL P.C., ARWA  
PHYSICAL THERAPY, P.C., HELIOPOLIS  
MEDICAL, P.C.,

("Medical Provider Defendants"),

Defendants.

-----X  
**KATHRYN E. FREED, J.S.C.**

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVIT ANNEXED	1-2 (Exs. A-C)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this declaratory judgment action, plaintiff Country-Wide Insurance Company moves, pursuant to CPLR 306-b, a) to deem service of its summons and complaint as timely; or, in the alternative; b) granting plaintiff an extension of time of the 120-day period to serve the complaint for "good cause"; c) permitting filing of the affidavits of service *nunc pro tunc* or extending the time

to file the same; and d) for such other and further relief as this Court deems just and proper. After a review of plaintiff's papers and the relevant statutes and case law, plaintiff's motion, which is unopposed, is **granted**.

#### **FACTUAL AND PROCEDURAL BACKGROUND:**

This action arises from claims between plaintiff, an insurance company, and defendants for reimbursement for no-fault benefits allegedly provided to defendant Janaii Walker after he was involved in an automobile accident on April 24, 2014. Ex. A. Plaintiff commenced this action by filing a summons and verified complaint on October 22, 2014. Exs. A and B. On November 13, 2014, Quadir McCollum, the paralegal assigned to this matter by plaintiff's counsel, gave the summons and complaint to a process server. Ex. C. Counsel represents that all affidavits of service have been received by his office. The affidavits of service are not annexed to the motion as exhibits but are efiled. They demonstrate that service of process was made on all defendants except Janaii Walker within 120 days after the summons and complaint were filed with the court and that the affidavits of service were filed with the court more than 120 days after the summons and complaint were filed with the court.

#### **POSITION OF THE PLAINTIFF:**

Plaintiff's counsel argues that this Court should grant plaintiff an extension of time to serve defendants for good cause shown. Here, urges plaintiff, the good cause was its reasonably diligent effort to serve defendants within 120 days after the filing of the summons and complaint. In the alternative, plaintiff asserts that, if good cause is not found, then this Court should find that an

extension of time should be granted in the interest of justice.

**LEGAL CONCLUSIONS:**

Pursuant to CPLR 306-b, the summons and complaint must be served within 120 days after the action is commenced (here October 22, 2014). If service is not completed within such time, the court may, upon motion, dismiss the action without prejudice or, in its discretion, grant an extension of time to effectuate service “upon good cause shown or in the interest of justice.” CPLR 306-b; *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-106 (2001).

To obtain a “good cause” extension, a plaintiff must demonstrate reasonable diligence in attempting to serve a defendant. *Id.*, at 104. Here, plaintiff’s counsel asserts that plaintiff demonstrated reasonable diligence by giving the pleadings to its process server, Atlas Process Servers, to serve on its behalf. Plaintiff’s Aff. In Supp., at par. 7. In his affidavit in support of the motion, McCollum states that he gave the summons and complaint to a process server on November 13, 2014, with “enough time to timely serve all defendants.” McCollum Aff., at par. 9. Indeed, as established by the affidavits of service filed with the court, all of the defendants except for Janai Walker were served with process within 120 days after the filing of the summons and complaint. Walker was served on February 24, 2015, merely 5 days after the expiration of the 120-day period. However, the affidavits of service were not filed with the court until after the expiration of the 120-day period.

Given that plaintiff has demonstrated reasonably diligent efforts to effectuate service within the 120-day period, this Court, in its discretion, grants plaintiff’s motion for an extension of time to complete service on defendants pursuant to CPLR 306-b and service on defendants is hereby deemed

timely *nunc pro tunc*.

Therefore, in light of the foregoing, it is hereby:

ORDERED that plaintiff's motion for an extension of time to complete service on defendants is granted and the service is hereby deemed timely *nunc pro tunc*; and it is further,

ORDERED that plaintiff is directed to serve a copy of this order, with notice of entry, upon all defendants within ten (10) days after the issuance of this order; and it is further,

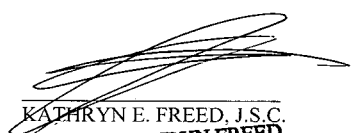
ORDERED that defendants shall serve and file their answers to the complaint within thirty (30) days after the receipt this order with notice of entry; and it is further,

ORDERED that all counsel shall appear on July 12, 2016 at 80 Centre Street, Room 280, at 2:30 p.m. for a preliminary conference in this matter; and it is further,

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

Dated: March 29, 2016

ENTER:



KATHRYN E. FREED, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT