

Korea Deposit Ins. Corp. v Mina Jung
2016 NY Slip Op 31497(U)
June 17, 2016
Supreme Court, New York County
Docket Number: 653744/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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KOREA DEPOSIT INSURANCE CORPORATION,
bankruptcy administrator for bankrupt
Tomato Savings Bank Co., Ltd.,

Index No. 653744/2015

Plaintiff

- against -

DECISION AND ORDER

MINA JUNG and SUNG-MIN CHOI,

Defendants

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I. INTRODUCTION

Plaintiff moves to extend its time to serve its summons and complaint on defendants another 180 days beyond the 120 days permitted by C.P.L.R. § 306-b after plaintiff commenced this action November 12, 2015. For plaintiff to extend its time to serve defendants, plaintiff must show that good cause or the interests of justice dictate the extension. C.P.L.R. § 306-b; Leader v. Maroney, Ponzini & Spencer, 97 N.Y.2d 95, 104 (2001); Frank v. Garcia, 84 A.D.3d 654, 655 (1st Dep't 2011); Spath v. Zack, 36 A.D.3d 410, 413 (1st Dep't 2007); Lippett v. Education Alliance, 14 A.D.3d 430, 431 (1st Dep't 2005). Good cause focusses on plaintiff's diligence in attempting to serve defendants and its reasons for not effecting service despite that diligence. Plaintiff's diligence bears on the interests of justice, but this standard also encompasses all other circumstances bearing on the determination. Leader v. Maroney, Ponzini & Spencer, 97 N.Y.2d at 104-105; Woods v. M.B.D.

Community Hous. Corp., 90 A.D.3d 430, 431 (1st Dep't 2011); Spath v. Zack, 36 A.D.3d at 413; Lippett v. Education Alliance, 14 A.D.3d at 431.

II. GOOD CAUSE

Plaintiff concedes that it did nothing to serve defendants before February 2, 2016, except hope that defendants' attorney would accept service for defendants and relieve plaintiff of the requirement to serve defendants in the Republic of Korea with the pleadings translated into Korean. Therefore plaintiff is not entitled to extend its time for the 82 days when plaintiff did nothing.

On February 2, 2016, plaintiff retained a foreign services business, Crowe Foreign Services, to translate the summons and complaint and deliver the translated pleadings to the Central Authority in the Republic of Korea, which is the body authorized to serve foreign pleadings there. On March 8, 2016, Crowe Foreign Services delivered the translated pleadings to the Central Authority. Although plaintiff does not show that the 35 days between February 2 and March 8, 2016, were reasonably necessary to translate and prepare the documents for service, neither do defendants, who themselves or through their attorney likely are familiar with the translation and service of foreign documents in the Republic of Korea, question the reasonableness of this lapse in time. Plaintiff has not shown, however, that it even advised Crowe & Associates regarding the deadline of March 11, 2016, for service under C.P.L.R. § 306-b or made any attempt

to urge Crowe & Associates to translate the summons and complaint and deliver them to the Central Authority in less than 35 days.

Crowe Foreign Services has instructed plaintiff to expect that the Central Authority will not complete service on defendants for four to eight months after delivery to the Central Authority of the documents to be served. Plaintiff likewise has not shown any attempt to advise the Central Authority regarding the statutory deadline for service or to urge the Central Authority to complete service on defendants as promptly as possible. Such attempts are examples of the diligent efforts to complete service that plaintiff must undertake to warrant an extension of the 120 days. Upon any extension of that original period, plaintiff must persist with such efforts.

Up to now, plaintiff has failed to show its diligent efforts to complete service timely. Slate v. Schiavone Constr. Co., 4 N.Y.3d 816, 817 (2005); Cassini v. Advance Publs., Inc., 125 A.D.3d 467, 468 (1st Dep't 2015); Khedouri v. Equinox, 73 A.D.3d 532, 532 (1st Dep't 2010); Johnson v. Concourse Vil., Inc., 69 A.D.3d 410, 410 (1st Dep't 2010). See Frank v. Garcia, 84 A.D.3d at 654; Sutter v. Reyes, 60 A.D.3d 448, 449 (1st Dep't 2009). Therefore the court resorts to the alternative standard for extending plaintiff's time: whether an extension will serve the interests of justice.

III. INTERESTS OF JUSTICE

In determining whether interests of justice mandate an extension, the court must consider any expiration of the statute

of limitations, any prejudice to defendants, and the merits of plaintiff's claims, as well as its diligence, the length of its delay in service, and the promptness of its request to extend its time. Leader v. Maroney, Ponzini & Spencer, 97 N.Y.2d at 105-106; Nicodene v. Byblos Rest., Inc., 98 A.D.3d 445, 446 (1st Dep't 2012); Henneberry v. Borstein, 91 A.D.3d 493, 496 (1st Dep't 2012); Lippett v. Education Alliance, 14 A.D.3d at 431. Plaintiff's failure to serve defendants up to now has not deprived them of full notice of this action shortly after it was commenced and well before any statute of limitations has expired. Solano v. Mendez, 114 A.D.3d 614, 614 (1st Dep't 2104); Nicodene v. Byblos Rest., Inc., 98 A.D.3d at 446; Henneberry v. Borstein, 91 A.D.3d at 496; Woods v. M.B.D. Community Hous. Corp., 90 A.D.3d at 431. Shortly after plaintiff commenced this action, defendants filed affirmations demonstrating their awareness that they are defendants in this action, that the claims here involve the same issues as in litigation against them in Korea, and that the claims here lack merit. Plaintiff, for its part, has presented evidence that its claims against defendants as the transferor and transferee of a fraudulent conveyance, for no consideration, to avoid defendant Choi's debts to plaintiff, are meritorious under various provisions of New York Debtor and Creditor Law §§ 273-76, even taking into consideration the facts defendants present.

The only prejudice to defendants that they identify is the temporary restraining order that the court imposed limiting

defendant Jung's encumbrances on her real property in New York, based on plaintiff's showing of meritorious claims that defendant Choi, for no consideration, fraudulently conveyed funds to Jung to purchase that property. Such prejudice is not from the failure to serve defendants and may be remedied by defendants' showing that plaintiff is not entitled to the restraint. Defendants thus fail to specify any lost rights, change of position, or expense due to plaintiff's delay in serving defendants as required. Nicodene v. Byblos Rest., Inc., 98 A.D.3d at 446; Woods v. M.B.D. Community Hous. Corp., 90 A.D.3d at 431; Sutter v. Reyes, 60 A.D.3d at 449; Spath v. Zack, 36 A.D.3d at 414.

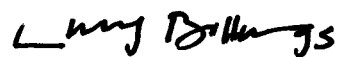
Unquestionably, it is in the interests of justice to decide claims on their merits. Hernandez v. Abdul-Salaam, 93 A.D.3d 522, 522 (1st Dep't 2012); Henneberry v. Borstein, 91 A.D.3d at 497. Any weaknesses defendant may have identified in plaintiff's claims at best raise factual issues, are not fatal to the complaint at the pleading stage, and are not enough to weigh against plaintiff in an interests of justice analysis. Solano v. Mendez, 114 A.D.3d at 614; Nicodene v. Byblos Rest., Inc., 98 A.D.3d at 446; Woods v. M.B.D. Community Hous. Corp., 90 A.D.3d at 431. See Cassini v. Advance Publs., Inc., 125 A.D.3d at 468; Khedouri v. Equinox, 73 A.D.3d at 532-33; Johnson v. Concourse Vil., Inc., 69 A.D.3d at 411. Therefore, despite plaintiff's lack of diligence in serving defendants, all other factors, including the absence of demonstrated prejudice to defendants

from an extension and the demonstrated merit to plaintiff's claims, militate in favor of extending plaintiff's time for service, C.P.L.R. § 306-b, particularly when the extension accounts for plaintiff's lack of diligence, as set forth below.

IV. CONCLUSION

Before filing the summons and complaint November 12, 2015, plaintiff knew it was suing residents in the Republic of Korea where it intended to serve them and where it would need its pleadings translated into Korean. Had plaintiff translated its summons and complaint before commencing the action and then immediately delivered them to Crowe & Associates, enabling the foreign services to deliver the pleadings promptly to the Central Authority, plaintiff still would need up to eight months to complete service. Therefore the court grants plaintiff's motion to extend its time to serve its summons and complaint on defendants another 120 days beyond the 120 days permitted by C.P.L.R. § 306-b after plaintiff commenced this action November 12, 2015: until July 8, 2016. The court denies any further extension because plaintiff has not shown any diligent efforts, itself or through Crowe & Associates or another agent, to advise the Central Authority regarding the deadline for service or to urge the Central Authority to complete service on defendants as promptly as possible.

DATED: June 17, 2016



LUCY BILLINGS, J.S.C.