

Siri Med. Assoc., PLLC v Paradise Ct. Mgt. Corp.

2017 NY Slip Op 33304(U)

April 28, 2017

Supreme Court, Bronx County

Docket Number: 22805/2015E

Judge: Mary Ann Brigantti

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART IA-15**

x

Index No.: 22805/2015E

SIRI MEDICAL ASSOCIATES, PLLC., a/k/a CATSKILL
PHYSICAL MEDICINE AND PAIN MANAGEMENT, PLLC.,

Plaintiff(s),

DECISION/ORDER**Present:****Hon. MARY ANN****BRIGANTTI****Justice, Supreme Court**

-against-

PARADISE COURT MANAGEMENT CORPORATION, et als.

Defendant(s),

x

DECISION AFTER HEARING

By decision and order of this Court dated July 29, 2016, the instant matter was set down for a Traverse hearing to determine the propriety of service on the defendant Paradise Court Management Corporation ("Paradise"). The hearing took place on February 27 and 28, 2017.

Paradise had argued in support of its motion to dismiss that the plaintiff Siri Medical Associates, PLLC., a/k/a Catskill Physical Medicine and Pain Management, PLLC. ("Plaintiff") failed to effectuate proper service in compliance with CPLR 311(a)(1) because it did not serve the summons and complaint upon a person authorized by Paradise to receive such service. This court ordered a hearing after finding that the submissions from both Plaintiff and Paradise raised an issue of fact as to whether Plaintiff's process server properly served Paradise in accordance with the CPLR by allegedly delivering the papers to Paradise's building superintendent.

Personal service upon a corporation can be effectuated through "delivering the summons and complaint to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service" CPLR 311(a)(1).

Under certain circumstances, service on other employees of a defendant “will be upheld where the process server makes a proper inquiry of a defendant’s employee and delivers the summons in accordance with his or her direction” (*see Adele Knits, Inc. v. Oxygen, Inc.*, 54 Misc.3d 140[A][App. Term, 2nd, 9th, 10th Jud. Depts., 2017], citing *Fashion Page, Ltd. v. Zurich Ins. Co.*, 50 N.Y.2d 265, 271-273 [1980]). CPLR 311(a)(1) is to be construed liberally, and in evaluating whether service should be sustained, “the circumstances of the particular case must be weighed” (*Fashion Page, Ltd. v. Zurich Ins. Co.*, 50 N.Y.2d at 273). A process server attempting service under CPLR 311 may be entitled to rely on the representations of corporate employees to identify the proper person to accept service (*id.* at 272). Service will be sustained if, after review of the facts and circumstances, it is determined that the process server acted reasonably and with due diligence in serving the summons and complaint (*id.* at 273). In other words, “if service is made in a manner which, objectively viewed, is calculated to give the corporation fair notice, the service should be sustained” (*id.*; *see also Wells v. Continuum Health Partners, Inc.*, 118 A.D.3d 632, 633 [1st Dept. 2014]).

After the hearing, this court finds that Plaintiff’s process server, Kenneth Borden, acted reasonably and with proper due diligence when he served the summons and complaint on someone who he believed was authorized to accept service on behalf of Paradise. Mr. Borden testified that he arrived at defendant’s property located at 2940 Grand Concourse in the Bronx and pressed a button on the intercom system that was designated for the building superintendent. The system then telephonically connected to a man who identified himself as the building superintendent. Mr. Borden explained who he was and that he was there to serve legal papers. The man who answered the intercom then stated that he would be right there. A few moments later, a man entered the building and Mr. Borden again identified himself and stated that he was there to serve legal papers on him because the building owners were being served. Mr. Borden testified that he then handed the man a copy of the summons and complaint. When Mr. Borden asked for the man’s name, then man responded “Gjek Lumaj,” which Mr. Borden wrote down on the affidavit of service at that exact moment. After the man received the documents, he told Mr. Borden that he would forward them to the building owners. Mr. Borden stated that after the man

left, he compared the name that the man gave with what was written next to the typed “superintendent” that was on the buzzer, and it “could be one in the same” but the name on the buzzer was “quite illegible.” This court finds the foregoing testimony to be credible and sufficient to demonstrate that Mr. Borden acted reasonably under the circumstances. This court arrives at this conclusion even assuming that Mr. Lumaj was being truthful when he testified at the hearing that he has not worked as the building superintendent since 2002 or 2003. It is evident that someone responded to the “superintendent” intercom buzzer and identified himself as an individual who would accept the summons and complaint on behalf of Paradise.

Even accepting the testimony from Paradise’s members Prael Peter Rukaj and Larry Rukaj as true, and assuming that a building superintendent was not authorized to accept service on behalf of Paradise, the process server made a sufficient inquiry of the responding individual and was entitled to rely on the individual’s assertion that he would forward the documents to the building owner. Mr. Borden identified himself, identified the papers being served, and he asked the responding individual if he “would accept the documents,” and the responding individual “said he would and he would forward them to the owners” (Hearing Transcript at P.18), which implied that the individual had the authority to receive those papers. Mr. Borden was not required to ask further questions of the responding individual in order to verify his employment status (*see Arvanitis v. Bankers Trust Co.*, 286 A.D.2d 273; *see also Dunn v. Pallett*, 66 A.D.3d 1179, 1181 [3rd Dept. 2009])[service proper even though server only relied on statement that individual was a manager of defendant, and server made no further inquiries about the manager’s specific duties]). This court also credits Mr. Borden’s testimony denying that he ever saw a posted sign in the building vestibule designating Gjovalin Vusaj as the building superintendent, notwithstanding the testimony from Mr. Vushaj and Peter and Larry Rukaj that in fact such a sign had been posted in the vestibule since 2012 or 2014. That Plaintiff itself may have had knowledge as to who the superintendent of the building was does not negate the reasonableness of Mr. Borden’s actions or the validity of service.

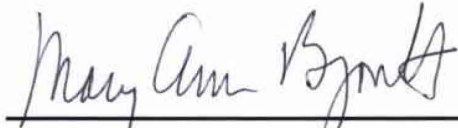
In light of the foregoing, Plaintiff has sufficiently demonstrated proper service upon Paradise in accordance with CPLR 311(a)(1), and therefore any defects in Plaintiff’s affidavit of

service are insufficient to deny jurisdiction (*see Morrissey v. Sostar, S.A.*, 63 A.D.2d 944 [1st Dept. 1978]; *Navarro v. Singh*, 110 A.D.3d 497 [1st Dept. 2013]). Paradise's cross-motion to dismiss pursuant to CPLR 3211(a)(8) is therefore denied.

This constitutes the Decision and Order of this Court.

Dated: _____

4/28/17



Hon. Mary Ann Brigantti, J.S.C.