

**United Lubavitcher Yeshivoh v John Does Nos  
"1"-40"**

2018 NY Slip Op 30103(U)

January 16, 2018

Supreme Court, Kings County

Docket Number: 523998/17

Judge: Bernard J. Graham

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This opinion is uncorrected and not selected for official publication.

Hon. Bernard J. Graham J.S.C.

AT IAS PART 72 of the Supreme Court of the State of New York, Kings County Borough of Brooklyn, City of New York, on the 16<sup>th</sup> day of JANUARY, 2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: Part 36

Index No.: 523998/17  
Motion Calendar No.  
Motion Sequence No.

UNITED LUBAVITCHER YESHIVOTH,

Plaintiff(s),

ORDER

-against-

Present:

Hon. Judge Bernard J. Graham  
Supreme Court Justice

JOHN DOES NOS, "1"- "40," Occupants of  
749 Eastern Parkway, Brooklyn, New York,  
Block No. 01264, Lot No. 0054

Defendant(s)

The plaintiff, has moved in this ex-parte application, for an order, pursuant to CPLR § 308(5), to authorize an alternative method of service to effectuate service upon the defendants.

The movant (plaintiff), by their counsel, affirms that the underlying proceeding is an ejectment action in which the plaintiff seeks to be restored to possession of its real property located at 749 Eastern Parkway, Brooklyn, New York ("subject property"). It is alleged by the movant that the defendants are the current occupants of the units in the subject property whose identity has not as yet been ascertained, and they are currently being named as John Does "1"- "40".

In support of this application, the plaintiff offers the affirmation of Dovid Y. Hersh, the owner of City Process Servers, whose office previously attempted to effectuate service upon the defendants. Mr. Hersh states that three attempts were made to effectuate service at the subject property. On December 18, 2017, Mr. Hawker, an employee of City Process Servers, was able to gain access to the premises, but was unable to serve the eight units and was subjected to verbal harassment by the yeshiva students who resided at the premises. Mr. Hawker made a second attempt to effectuate service on December 19, 2017, but could not gain access to the property as the combination on the outside lock had allegedly been changed. On December 27, 2017, Mr.

Hawker made a third attempt to effectuate service at the subject premises. It is alleged that he was permitted to enter the premises, but once he attempted service, he was physically assaulted by the students and removed from the property.

This Court has considered the request made by the movant to permit alternative service, pursuant to CPLR § 308(5), which includes posting the notice on the outside of the property and mailing the notices by express mail to the occupants of the units. This Court finds that in order to fulfill the notice component of jurisdiction, a method of service be used that is reasonably calculated to apprise a party of an action (see Mullane v. Central Hanover Bank & Trust Co., 339 US 306 [1950]). A court lacks power to grant an order, pursuant to CPLR § 308(5) (referred to as expedient service), without the requisite showing of impracticability of service by the methods in CPLR § 308(1), (2) and (4) (see Corbo v. Stephens, 272 AD2d 502, 709 NYS2d 99 [2<sup>nd</sup> Dept. 2000]).

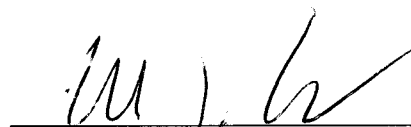
Accordingly, this Court finds that prior to authorizing alternative service, pursuant to CPLR § 308(5), an additional attempt be made on behalf of the plaintiff to serve the defendants, with the assistance of the New York City Police Department, if necessary. In the event that the plaintiff is still unable to effectuate service in this manner, this Court will then consider an alternative method, pursuant to CPLR § 308(5).

This ex-parte application is denied without prejudice with leave to renew.

This shall constitute the order of this Court.

Dated: January 16, 2018

Brooklyn, New York



Hon. Bernard J. Graham, Justice  
Supreme Court, Kings County

**HON. BERNARD J. GRAHAM**

IAS

At an ~~Ex Parte~~ Part of Supreme Court of the State of New York, for the County of Kings at the Courthouse located at 360 Adams Street, Brooklyn, New York on the \_\_\_\_\_ day of Jan, 2018



PRESENT: \_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
UNITED LUBAVITCHER YESHIVOTH,

Plaintiff,

Index No. 523998/2017

- against -

JOHN DOES NOS. "1" - "40," Occupants of 749  
Eastern Parkway, Brooklyn, New York, Block No.  
01264, Lot No. 0054,

Defendants.

-----X

**EX PARTE ORDER FOR ALTERNATIVE SERVICE PURSUANT TO CPLR 308(5)**

Upon the annexed affirmation of Frank R. Seddio, Esq. dated January 2, 2018, and the exhibits annexed thereto, and the affirmation of David Hersh dated December 29, 2017, in support of Plaintiff United Lubavitcher Yeshivoth's ("Movant" or "Plaintiff") *ex parte motion* for an Order pursuant to CPLR 308(5) authorizing an alternative, court-directed, form of service of process and granting such other and further relief as the Court deems just and proper, the summons and complaint, and all prior pleadings and proceedings had herein:

**SUFFICIENT CAUSE THEREFORE APPEARING** it is:

ORDERED that service of process on defendants under CPLR 308(1), (2), and (4) is

impracticable; and it is further

ORDERED that Plaintiff may effectuate service of process upon defendants by overnight mailing of five (5) copies of the summons and complaint, addressed to "John Doc," to each unit of the real property located at 749 Eastern Parkway, Brooklyn, New York, Block No. 01264, Lot No. 0054, and the affixing of two (2) copies of the summons and complaint upon the outside entrance to the building; and it is further

ORDERED that service upon each defendant shall be complete ten (10) days after the filing of an affirmation of service.

Dated: Brooklyn, New York  
January \_\_\_\_\_, 2018

ENTER:

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