

Gluck v Ramapo Mgt. Inc.

2018 NY Slip Op 34302(U)

July 6, 2018

Supreme Court, Rockland County

Docket Number: Index No. 031851/2016

Judge: Robert M. Berliner

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. ROBERT M. BERLINER, J.S.C.

To commence the statutory
time period for appeals as of
right (CPLR 5513 [a]), you
are advised to serve a copy
of this order, with notice of
entry, upon all parties.

-----X
ABRAHAM GLUCK,

Plaintiff,

DECISION AND ORDER

-against-

RAMAPO MANAGEMENT INC., TERRACE
VIEW ESTATES HOMEOWNERS
ASSOCIATION, INC., TERRACE VIEW
REALTY CO., LLC, BATES CONDOMINIUM
VI, BATES DRIVE CONDOMINIUM III and
BATES DRIVE CONDOMINIUM III-BOARD
OF MANAGERS,

Index No.: 031851/2016

Defendants.

Motion Sequences #3, #4, #5 and #6

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The following papers, numbered 1 to 12, were read in connection with Plaintiff's motion for a default judgment against Defendant Bates Drive Condominium III [hereinafter "Condo III"] pursuant to CPLR § 3215(a); Defendant Condo III's cross-motion to dismiss the Second Amended Complaint pursuant to CPLR §§ 3211(a)(8) and 1003; Plaintiff's motion to extend time to serve Defendant Condo III pursuant to CPLR § 306-b; and Defendant Condo III's cross-motion seeking dismissal of the Second Amended Complaint pursuant to CPLR § 306-b and other related relief:

Notice of Motion/Attorney Affirmation/Exhibits(A-H).....	1-2
Affirmation in Opposition/Exhibits(A-D).....	3
Reply to Defendants Oppositions and Opposition to Defendant's Cross Motions.....	4
Notice of Cross-Motion/Affirmation in Support/Exhibits(A-G).....	5-6
Affirmation in Reply.....	7
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Affirmation in Reply.....	12

Upon the foregoing papers, it is ORDERED that these applications are disposed of as follows:

Plaintiff commenced this action to seek damages for personal injuries sustained by Plaintiff from an alleged trip and fall accident on October 5, 2014. The alleged accident occurred at "54

Bates Drive, Monsey, New York 10952" [hereinafter the "Premises"]. Plaintiff alleges he fell as a result of uneven pavement at the Premises. Plaintiff filed a Second Amended Summons and Second Amended Verified Complaint on April 21, 2017. Plaintiff purportedly served Defendant Condo III by personally serving its agents Joel Glanzer and Mendal Guttman on June 15, 2017. Plaintiff learned upon filing their motion for default judgment that Mr. Glanzer and Mr. Guttman were not authorized to accept service on behalf of Defendant Condo III. Plaintiff promptly moved to extend their time to serve Defendant Condo III and Defendant Condo III cross-moved for a second time to dismiss this action citing the expiration of the statute of limitations and failure to comply with CPLR §306-b, different grounds from its previous motion. For the sake of judicial economy, the Court will focus its analysis on Plaintiff's motion to extend time to serve its Second Amended Complaint and Second Amended Summons and Defendant Condo III's cross-motion in opposition, as these motions are dispositive and render the prior motions moot.

In support of its motion, Plaintiff avers that he made numerous good faith attempts and did his due diligence in attempting to effectuate service during the statutory period. Plaintiff's counsel asserts that his office conducted an extensive search into the members of Bates Drive Condominium III's Board of Managers and Mr. Glanzer and Mr. Guttman were named in its findings. Plaintiff also did a search on Rockland County's Property Check website, New York State Department of State's website and conducted a search for cases in which Defendant Condo III was named as a party. Plaintiff avers this establishes his due diligence in trying to ascertain the proper person to serve in the instant action. Plaintiff states that neither Mr. Glanzer nor Mr. Guttman indicated that they were no the proper party to accept service on behalf of Defendant Condo III. Plaintiff claims there was no prejudice to Defendant Condo III due to Plaintiff's defective service. Additionally, Plaintiff argues that no prejudice can be claimed because Saul Schlesinger, Manager of Bates Drive Condominiums, attested that he learned of the summons and complaint in August 2017. Plaintiff contends that the allegations contained in his Second Amended Verified Complaint establish a meritorious cause of action and requests he be given an additional 60 days to effectuate service.

In opposition, Defendant Condo III cross-moves arguing that Plaintiff is not entitled to amend a pleading and his time to serve Defendant Condo III has expired. Defendant Condo III states that Plaintiff never submitted an affidavit of merit or any evidentiary proof to substantiate its contention that the Court granted an oral application for leave to amend his Complaint.

Defendant Condo III argues that leave to file its Second Amended Verified Complaint cannot be obtained *nunc pro tunc* and therefore Plaintiff's complaint must be dismissed as the statute of limitations for this action expired on October 5, 2017. Furthermore, Defendant Condo III contends that Plaintiff admitted that its purported service was defective and since more than 120 days since the commencement of this action has passed, dismissal pursuant to CPLR §306-b is warranted. Defendant Condo III argues that since Plaintiff's motion to extend time was filed on November 15, 2017, after the statute of limitations for this action expired, no extension of time to effectuate service can be granted. Defendant Condo III asserts that Plaintiff fails to demonstrate good cause or that in the interest of justice his motion should be granted. Defendant Condo III argues that Plaintiff fails to demonstrate due diligence in its attempts to effectuate proper service. Defendant states that it will be prejudiced by this action because the statute of limitation has expired.

"If service is not made upon a defendant within the time provided ... the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service." CPLR §306-b.

"To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. . . . If good cause for an extension is not established, courts must consider the "interest of justice" standard of CPLR 306-b. The interest of justice standard does not require reasonably diligent efforts at service, but courts, in making their determinations, may consider the presence or absence of diligence, along with other factors. The interest of justice standard is broader than the good cause standard as its factors also include the expiration of the statute of limitations, the meritorious nature of the action, the length of delay in service, the promptness of a request by the plaintiff for an extension, and prejudice to the defendant." *Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 31-32 [2d Dept 2009][internal citations omitted].

In reviewing the parties' submissions, the Court finds that the interest of justice and the strong public policy considerations to decide actions on the merits, Plaintiff has demonstrated his entitlement for an extension of time to effectuate proper service upon Defendant Condo III. Defendant Condo III's motion practice in this action shows that it had notice of the action and that it will not be prejudiced. As to Defendant Condo III's argument that the statute of limitations has expired, this action was pending before the statute of limitations expired and Plaintiff attempted to serve Defendant Condo III during the statutory time period. Upon finding out that service was defective, Plaintiff promptly moved to extend his time to effectuate proper service. These

arguments add credence to the Court's determination that in the interest of justice Plaintiff's time to serve should be extended.

Based upon the foregoing, it is

ORDERED that Plaintiff's motion to extend time to serve the Second Amended Verified Complaint and Second Amended Summons is granted. Plaintiff is directed to serve Defendant Condo III within thirty (30) days of this Decision and Order; and it is further

ORDERED that Defendant's cross-motion to dismiss for failure to comply with CPLR § 306-b is denied in its entirety; and it is further

ORDERED that Plaintiff's motion for default judgment and Defendant's cross-motion seeking dismissal of this action for lack of personal jurisdiction are denied as moot given the above determinations.

The parties are advised that a status conferenced has been scheduled in this matter for **September 25, 2018 at 9:30 a.m.**

The foregoing constitutes the Decision and Order of the Court.

Dated: New City, New York
July 6, 2018

ENTER


HON. ROBERT M. BERLINER, J.S.C.

To:

Counsel for Plaintiff
Catania, Mahon, Milligram & Rider, PLLC

Counsel for Defendant Condo III
Litchfield Cavo LLP