

**Holland v Thiam**

2019 NY Slip Op 32746(U)

September 10, 2019

Supreme Court, New York County

Docket Number: 162234/2018

Judge: David Benjamin Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

-----X

TOM HOLLAND,

Plaintiff,

- v -

MAHMOUD THIAM, QUANTIC LIMITED, QUANTIC AFFILIATES, RUI DE SOUSA, JOSEPH COHEN, ANTOINE MERHEB, GREGOIRE BELLOIS, RONALDA MACDONALD, IVAN MURPHY, MOMADE RAJAHUSSEN, THE DECEASED ESTATE OF SAMI SULEIMAN TEUFIL MAROUN,

Defendant.

-----X

INDEX NO. 162234/2018
MOTION DATE 05/01/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 332

were read on this motion to/for EXTEND - TIME

Upon the foregoing documents, it is

This action was commenced by the filing of a Summons with Notice on December 31, 2018. Plaintiff Tom Holland ("Plaintiff") failed to effectuate service within 120 days as required by CPLR 306-b. Plaintiff moves, by motion filed May 01, 2019, for an extension of time to serve defendants Mahmoud Thiam, Quantic Limited, Quantic Affiliate/s, Rui De Sousa, Joseph Philippe Cohen, Antoine Merheb, Gregoire Bellois, Ronalda Mac Donald, Ivan Murphy, Momade Aquil Rajahussen and the Deceased Estate of Sami Suleiman Teufil Maroun (collectively, "Defendants").

CPLR 306-b governs whether a plaintiff can extend time to serve process. Under the statute, service must be made within 120 days after the filing of a Summons and Complaint or

Summons with Notice. A trial court has the power to extend the initial 120 days allowed for the service, however, the court must find either that the plaintiff demonstrates “good cause” for the delay or alternatively, that it would be in the “interest of justice” to grant the extension (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 102 [2001]).

In the context of a motion to extend time to serve process, good cause requires a threshold showing that the plaintiff made reasonably diligent efforts to make timely service (*Henneberry v Borstein*, 91 AD3d 493 [1st Dept 2012]). Good cause is most likely to be found where “the plaintiff’s failure to timely serve process is a result of circumstances beyond the plaintiff’s control.” (*Id.* citing to *Bumpus v New York City Transit Auth.*, 66 AD3d 26 [2d Dept 2009]). The absence of any attempt to make service within the 120-day period will likely disqualify the plaintiff from an extension on the grounds of good cause (*Khedouri v. Equinox*, 73 AD3d 532 [ 1<sup>st</sup> Dept 2010]).

The interest of justice standard is broader and does not require a showing of good cause and permits a trial court to consider a plethora of factors in making an interest of justice determination. A trial court may consider diligence, or lack thereof, along with any other relevant factor in making this determination, including “expiration of the Statute of Limitations, the [potentially] meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff’s request for the extension of time and prejudice to the defendant” (*Leader* at 105-106).

Generally, where good cause cannot be found, a trial court is permitted to grant an extension of time in the interest of justice (*Johnson v Concourse Village, Inc.*, 69 AD3d 410 [1<sup>st</sup> Dept 2010]). Nevertheless, a trial court acts within its discretion in denying a plaintiff’s request for an extension of time to serve the defendants, where the plaintiff does not demonstrate due

diligence in attempting service (*Goldstein Group Holding Inc. v 310 East 4th Street Housing Development Fund Corp.* 154 AD3d 458 [ 1<sup>st</sup> Dept 2017]).

Plaintiff failed to demonstrate that he exercised any, let alone reasonably diligent, efforts in attempting to effect proper service upon the defendants and thus, did not establish “good cause.” Additionally, the Court finds that plaintiff has not provided sufficient information to warrant the granting of an extension “in the interests of justice.”

Plaintiff filed his summons with notice on December 31, 2018. On May 1, 2019, plaintiff filed a motion to extend his time to serve defendants after the expiration of the 120-day statutory period. Plaintiff seeks a 45-day extension in which to serve defendants the correct “First Amended Complaint” and claims difficulty in effecting service on the various foreign defendants in this action and meeting international service requirements.

Plaintiff does not provide the Court with any details of his attempts to effect service prior to a few days before the expiration of the 120-day period. Although he states that defendants have evaded service, he offers no evidence of such. Plaintiff’s only proof of his attempt to effect service on the defendants shows that his earliest attempt was on April 25, 2019, just days before his time to serve would expire. Plaintiff’s waiting until the last days of the statutory period, demonstrates a lack of reasonable due diligence.

In fact, plaintiff has previously filed a prior action, seeking essentially the same relief against many of the same defendants, failed to effectuate timely service and made a motion to extend the time to serve at the end of the 120-day statutory period. That motion was denied, and that action was dismissed without prejudice (see NY County Sup. Ct. Index No. 154930/2018, Perry, J). Justice Perry’s decision, in denying plaintiff’s motion for an extension, articulated the exact same standards that plaintiff has once again failed to satisfy. In refileing, plaintiff has once

again used the same tactics such as only attempting service at the end of the 120-day statutory period and then asking the court to grant a motion to extend. Given plaintiff's failure to act with any due diligence to timely serve the defendants, an extension of time to serve the defendants in the interest of justice is not warranted.

Accordingly, it is hereby

ORDERED that Plaintiff's motion in Motion Sequence 001 for an extension of time to serve defendants is denied and this action is dismissed; and it is further

ORDERED that all the other pending motion shall be marked as denied as academic.

9/10/2019  
DATE

  
DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

**HON. DAVID B. COHEN  
J.S.C.**