

Brown v Lucky Dollar Varieties

2019 NY Slip Op 35016(U)

June 3, 2019

Supreme Court, Bronx County

Docket Number: Index No. 20419/2019E

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

Mtn. Seq. # 1
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

SHAWN BROWN,

Index No.: 20419/2019

Plaintiff,

- against -

DECISION and ORDER

LUCKY DOLLAR VARIETIES, PACIFIC USA
BESCON S & D, KYU MAN LEE and
SALIM DORIA,

Defendants.

PRESENT: Hon. Lucindo Suarez

Upon the enumerated papers; the appearances of the parties on April 26, 2019; the traverse hearing conducted May 31, 2019; and due deliberation; the court finds:

The issue presented in the traverse hearing was whether *pro se* Defendant Salim Doria and Defendant Lucky Dollar Varieties (collectively "Defendants") were properly served with the underlying amended summons and complaint pursuant to CPLR §§308(1) and 311(a)(1). The court finds that Defendants were properly served, and that this court has personal jurisdiction over same.

Plaintiff established his *prima facie* case that he personally served Defendants with the amended summons and complaint. The court took judicial notice pursuant to CPLR §4511(b) of the affidavits of service of Licensed Process Server, Avner Rahimov, wherein he averred that he personally served Defendants on January 15, 2019, at approximately 6:05 a.m., with two copies of the amended summons and complaint. Further, Mr. Rahimov credibly testified during Plaintiff's direct examination that on January 15, 2019, he personally served Defendants at 35-14

72nd Street Apt. # 2A Jackson Heights, New York at approximately 6:05 a.m., by providing each with a copy of the amended summons and complaint. In addition, Plaintiff entered into evidence a time stamped video dated January 15, 2019, depicting service of the amended summons and complaint in accordance with his testimony.

Plaintiff then called *pro se* Defendant Salim Doria to testify. Mr. Doria conceded that he was personally served with the amended summons and complaint. He further conceded that he was the person served in the video taken by Mr. Rahimov. In addition, he conceded that he owned a 99 cents store by the name Luck Dollar Varieties located in Bronx County, and that he was president of same. Defendants did not present any evidence in their direct case or present any contradictions to Plaintiff's witness that service of process was not effectively made.

During summations although Defendants conceded to being personally served with the amended summons and complaint they attempted to argue that they were served prior to 6 a.m. rendering the service of process a nullity. However, Defendants did not present in their moving papers or at the traverse hearing any statutory authority or case law to support their proposition.

Therefore, the court finds that Plaintiff served the amended summons and complaint upon Defendants in accordance with CPLR §§308(1), and 311(a)(1), therefore, conferring upon the court personal jurisdiction over same.

With respect to Plaintiff's cross-motion for attorney's fees and sanctions due to Defendants purported frivolous conduct is denied. Even though Plaintiff makes compelling arguments for the imposition of attorney's fee and sanctions against Defendants the court takes into consideration their *pro se* status and will afford them leniency under the present circumstances. *See Corsini v. U-Haul Intl.*, 212 A.D.2d 288, 630 N.Y.S.2d 45 (1st Dep't 1995).

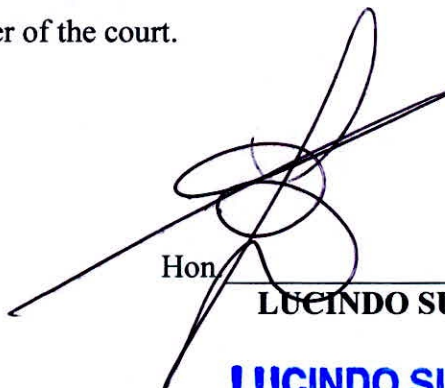
Accordingly, it is

ORDERED, Defendants' motion to dismiss the complaint is denied; and it is further

ORDERED, that Plaintiff's cross-motion for attorney's fees and sanctions is denied.

This constitutes the decision and order of the court.

Dated: 6/3/2019

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Hon

LUCINDO SUAREZ, J.S.C.

LUCINDO SUAREZ, J.S.C.