

**Sands v Cuddy**

2020 NY Slip Op 31491(U)

May 22, 2020

Supreme Court, New York County

Docket Number: 161160/2018

Judge: Melissa A. Crane

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 15**

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STEVEN SANDS,

Plaintiff,

-against-

INDEX NO.: 161160/2018

SEQ. NO.: 001

DECISION AND ORDER

CAROL CUDDY,  
PARAMOUNT PICTURES CORPORATION,

Defendants.

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**MELISSA A. CRANE, J.S.C.:**

Plaintiff brings a claim for, *inter alia*, defamation, tortuous interference, *respondeat superior*, violations of New York Civil Rights Law 40 and 41, and assault/battery against defendants, Carol Cuddy (“Cuddy”) and Paramount Pictures Corporation (“Paramount”) (hereinafter “defendants”). On November 30, 2017, defendants filmed a Netflix show, “*Maniacs*,” on Cranberry Lake Preserve, a public park in Westchester County with use of a permit. Defendants told plaintiff, a professional photographer, who was visiting the park that he was trespassing and defendants would forcibly remove him if he did not go voluntarily. Plaintiff did not leave. Subsequently, defendants instructed two paid security guards to remove Sands from the park.

On November 28, 2018, plaintiff filed a summons with notice. Plaintiff named “Paramount Television Productions” as a defendant. After subsequent research, plaintiff realized that “Paramount Television Productions” is a division of the corporation “Paramount Pictures Corporation.” Thus, on March 28, 2019, plaintiff served “Paramount Pictures Corporation” via the Secretary of State, not “Paramount Television Productions.” Defense counsel does not dispute service of the summons with notice on Paramount Television Corporation.

On April 11, 2019, plaintiff brought a motion (i) pursuant to CPLR 2001 and CPLR 305(c) to accept plaintiff's corrected summons with notice; or alternatively, (ii) pursuant to CPLR 3025, to grant plaintiff leave to amend the summons with notice; and (iii) pursuant to CPLR 306-b to grant an additional 120 day extension of time to serve process on defendant Carol Cuddy. On April 29, 2019, counsel for Paramount Pictures Corporation served a notice of appearance and demand for complaint. On June 14, 2019, defendants cross-moved pursuant to CPLR 306-b and 3211(a)(8) to dismiss the complaint against defendant, Cuddy. Defendants do not oppose that portion of plaintiff's motion for leave to amend and to correct plaintiff's summons with notice. On June 28, 2019, plaintiff filed a verified complaint.

CPLR 305(c) provides, "at any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced." Here, defendants suffer no prejudice, nor do defendants oppose the amendment.<sup>1</sup> Defendant Paramount has been on notice of the facts surrounding this case since March 28, 2019, when plaintiff served the summons with notice on Paramount. Accordingly, the court grants that part of plaintiff's motion to amend the summons with notice, and accepts plaintiff's corrected summons with notice.

Plaintiff also moves for an extension of time to serve defendant Cuddy pursuant to CPLR 306-b. Defendants oppose and cross-move to dismiss the complaint against Cuddy on the grounds that the court lacks personal jurisdiction because plaintiff failed to timely serve Cuddy. Under CPLR 306-b, courts should consider the following facts to determine whether to grant plaintiff an extension of time to serve: (1) good cause shown, and (2) in the interest of justice

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<sup>1</sup> Although defendants argue that only after they served a demand for a complaint did they know of this motion, defendants only opposed that portion of plaintiff's motion for an extension to serve defendant Cuddy.

(*Leader v Maroney, Pozini & Spencer*, 97 NY2d 95, 101 [2001]). Under the interest of justice standard, a showing of reasonable diligence to effectuate service is not a threshold that plaintiff must meet (*id.* at 104). Courts should weigh factors including whether the statute of limitations had expired, the meritorious nature of the causes of action, length of delay in service, promptness of plaintiff's request for the extension of time, and prejudice to defendant (*id.* at 105).

Defendants argue that plaintiff made no reasonable efforts to find and serve Cuddy. Further, defendants claim that the statute of limitations has expired and plaintiff's claims are not meritorious. Defendants also argue that plaintiff never served its motion to extend time on either defendants.

In this case, plaintiff filed a Summons with Notice on November 28, 2018. Under 306-b, plaintiff had until March 28, 2019 (120 days after the filing of the summons with notice) to serve Cuddy. The time that it took for plaintiff to move for an extension of time after 120 days had lapsed was a mere two weeks. The same counsel for Paramount represents defendant Cuddy in its cross-motion to dismiss. Plaintiff attempted to serve Cuddy at her last known business address during the 120-day period (*see Czik Aff*, dated June 28, 2019, ¶ 7). However, plaintiff encountered substantial difficulty locating an exact address for Cuddy because Cuddy relocated to California and no longer works for Paramount (*see Czik Aff*, dated April 4, 2019, ¶ 37).

Plaintiff also argues that there are valid, potentially meritorious claims against Cuddy.

Finally, the incident at issue occurred on November 30, 2017. Plaintiff commenced the action within the statute of limitations, on November 28, 2018. However, the statute of limitations had expired when plaintiff moved to extend time to serve. Accordingly, in consideration of all the above factors, an extension of time to serve is warranted in the interest of justice (*Philpot v Garbarini*, 2020 WL 2494866 [NY Co Sup Ct, May 2020] [granting plaintiff an extension of

time where delay was short, statute of limitations had expired, and counsel for timely-served defendant also represented un-served defendant]; *HSBC Bank, USA v Gibatov*, 2020 WL 2171652 at \*2 [2nd Dept, May 2020] [extension of time under CPLR 306-b granted where action timely commenced, statute of limitations expired when plaintiff moved to extend time to serve, and service timely attempted]).

Accordingly, it is hereby

**ORDERED** that the court grants plaintiff's motion to the extent that the court permits an additional 120-day extension of time to serve defendant Carol Cuddy starting from the e-filed date of this decision, and grants plaintiff leave to amend their Summons with Notice; and it is further

**ORDERED** that the court deems plaintiff's proposed amended summons as the corrected summons; and it is further

**ORDERED** that the court denies defendant's cross-motion to dismiss in its entirety.

Dated: 5/22/2020

ENTER:

  
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HON. MELISSA A. CRANE, J.S.C.