

Casine v Pardilov

2020 NY Slip Op 33054(U)

September 8, 2020

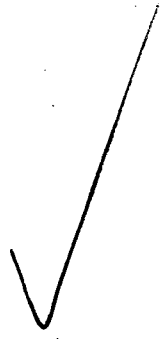
Supreme Court, Kings County

Docket Number: 527472/19

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.



At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of September 2020

HONORABLE FRANCOIS A. RIVERA

-----X
RICARDINE CASINE,

Plaintiff,

- against -

GERMAN PARDILOV, DIANA PARDILOVA,
and HVT, INC.,

Defendants.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the ex parte order to show cause filed by plaintiff Ricardine Casine (hereinafter Casine) on March 6, 2020, for an order: (1) pursuant to CPLR 308 (5), granting Casine the ability to serve defendants German Pardilov and Diana Pardilov (hereinafter the Pardilovs) by service upon their insurer, and (2) pursuant to CPLR 306-b granting an extension of time to serve said defendants.

- Order to show cause
- Affirmation of Casine's counsel in support
- Affirmation of emergency
- Exhibit A-G

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DECISION & ORDER
Index No. 527472/19

BACKGROUND

On December 18, 2019, Casine commenced the instant action for damages for personal injuries by filing a summons and verified complaint (hereinafter the commencement papers) with the Kings County Clerk's Office (KCCO). On February 20, 2020, Casine filed an amended verified complaint with the KCCO.

The amended complaint alleges the following salient facts. On March 9, 2017, Casine was driving a motor vehicle bearing New York State license plate number HLU5702 on Oriental Boulevard at or near Irwin Street, in Kings County, in the State of New York. On the same date, time and place German Pardilov was driving a motor vehicle bearing New York State license plate number HBA7947 (hereinafter the defendants' vehicle) with the knowledge and consent of its owners, Diana Pardilov and HVT, Inc. Due to German Pardilov's negligent operation of the defendants' vehicle, he collided with Casine's vehicle. The collision caused Casine to sustain serious physical injuries.

On May 11, 2020, the Pardilovs filed an amended answer with cross claims against co-defendant HVT, Inc. The amended answer asserts, among other things, an affirmative defense of lack of personal jurisdiction.

LAW AND APPLICATION

Pursuant to CPLR 306-b, a court may, in the exercise of discretion, grant a motion for an extension of time within which to effect service for good cause shown or in the

interest of justice (see *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104–105 [2001]). Good cause and interest of justice are two separate and independent statutory standards (*Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 31 [2nd Dept 2009]). To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. Good cause will not exist where a plaintiff fails to make any effort at service ... or fails to make at least a reasonably diligent effort at service. By contrast, good cause may be found to exist where the plaintiff's failure to timely serve process is a result of circumstances beyond the plaintiff's control (*Id.* at 31–32).

If good cause for an extension is not established, courts must consider the broader interest of justice standard of CPLR 306–b (see *Bumpus*, 66 AD3d at 32). In considering the interest of justice standard, the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including the expiration of the statute of limitations, the 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 the prejudice to defendant (*Leader*, 97 NY2d at 105–106).

In support of the motion Casine presented, inter alia, an affirmation of his counsel and the affidavits of his process server. The affidavits of his process server demonstrated diligent efforts to serve the commencement papers on each of the Pavilovs.

Casine did not seek a determination that he properly effectuated service on the Pardilovs pursuant to CPLR 308 (2) and 308 (4). Instead, in an apparent abundance of

caution, Casine seeks an extension pursuant to CPLR 306-b to effectuate service. The Court finds good cause to grant an extension for Casine to serve the Pardilovs.

Casine also seeks permission to serve the Pardilovs by service of the commencement papers on their insurer pursuant to CPLR 308 (5). CPLR 308 (5) vests a court with the discretion to direct an alternative method of service of process when it has determined that the methods set forth in CPLR 308 (1), (2) and (4) are impracticable (*see Home Fed. Sav. Bank v. Versace*, 252 AD2d 480 [2nd Dept 1998]). Although the impracticability standard is not capable of easy definition it does not require the applicant to satisfy the more stringent standard of due diligence under CPLR 308 (4) nor make an actual showing that service has been attempted pursuant to CPLR 308 (1), (2) and (4) (*see In re Kaila B.*, 64 AD3d 647, 648 [2nd Dept 2009], citing *Home Federal Sav. Bank*, 252 AD2d 480). Casine's papers did not establish that the methods set forth in CPLR 308 (1), (2) and (4) were impracticable for service on either of the Pardilovs. Accordingly, Casine's motion for an order permitting substituted service on the Pardilovs' insurer pursuant to CPLR 308 (5) is denied.

CONCLUSION

The motion of Ricardine Casine for an order granting leave pursuant to CPLR 308 (5) for substituted service on German Pardilov through his insurer is denied.

The motion of Ricardine Casine for an order granting leave pursuant to CPLR 308 (5) for substituted service on Diana Pardilov through her insurer is denied.

The motion of Ricardine Casine for an extension of time to serve German Pardilov is granted. Accordingly, the time to serve him is extended until January 4, 2021.

Ricardine Casine must serve and file proof of service with the Kings County Clerk's Office by January 11, 2021.

The motion of Ricardine Casine for an extension of time to serve Diana Pardilov is granted. Accordingly, the time to serve her is extended until January 4, 2021. Ricardine Casine must serve and file proof of service with the Kings County Clerk's Office by January 11, 2021.

The foregoing constitutes the decision and order of this Court.

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Jessica A. Rivera

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