

Santos v Holy Temple Church of the Lord Jesus Christ

2020 NY Slip Op 35549(U)

September 15, 2020

Supreme Court, Bronx County

Docket Number: Index No. 27517/2019

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 6

Index No. 27517/2019

JULIO SANTOS,

Plaintiff,

DECISION/ORDER

-against-

Present:
Hon. Laura G. Douglas
J.S.C.

THE HOLY TEMPLE CHURCH OF THE LORD JESUS CHRIST,
THE HOLY TEMPLE CHURCH OF THE LORD JESUS CHRIST
OF THE APOSTOLIC FAITH, and NASH ELECTRIC SERVICES, INC.,

Defendants.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion (Seq. No. 4) to vacate order and related relief:

Papers

Numbered

Plaintiff's Notice of Motion, Affirmation of Steve Marchelos, Esq. dated August 13, 2020 in Support of Motion, and Exhibits ("A" through "S")..... 1

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The plaintiff seeks an order vacating the Decision/Order of Hon. Elizabeth A. Taylor, J.S.C. dated May 29, 2020, renewing the motion to dismiss or consolidate brought by defendant The Holy Temple Church of the Lord Jesus Christ and the Holy Temple Church of the Lord Jesus Christ of the Apostolic Faith (collectively, "Holy Temple Church"), and granting that motion solely to the extent of consolidating this action ("Action No. 2") with an action pending in Supreme Court, Bronx County, under index number 34599/2018 ("Action No. 1") and amending the caption accordingly. The plaintiff's motion is granted on default solely to the extent ordered below and is otherwise denied. No opposition to the instant motion was filed.

Since the prior order was granted on default, this Court may entertain the instant motion (*see* CPLR Rule 2221(a)(1)). Defendant Holy Temple Church moved to dismiss this action on the grounds that there was a prior action pending or, alternatively, to consolidate this action with that other action pursuant to CPLR § 602. That motion was granted on default, with the Decision/Order indicating that no opposition papers were considered. The plaintiff now contends that he had timely filed opposition

papers that should have been considered in deciding that motion. The plaintiff opposed the branch of Holy Temple Church's motion seeking dismissal, but consented to the branch of the motion seeking consolidation. In support, the plaintiff submits a copy of his opposition papers stamped by the motion support office prior to the return date. In addition, Court records reveal that the plaintiff's opposition papers were timely filed electronically on November 11, 2019.

The Court finds that the plaintiff has stated adequate grounds for renewal of the motion by Holy Temple Church and consolidation. Procedural errors by the court are proper grounds upon which to grant renewal (*see Kase v. H.E.E. Company*, 95 AD3d 568 [1st Dept 2012]). Since they were timely filed, the plaintiff's opposition papers should have been before the Court. This Court will now consider them in renewing Holy Temple Church's motion.

Here, the plaintiff encountered difficulty in effectuating service of the summons and complaint upon Holy Temple Church, a religious organization, in Action No. 1. Consequently, the plaintiff sought an *ex parte* order directing an alternative method of service pursuant to CPLR § 308 and an extension of the service deadline pursuant to CPLR § 306. Since that application would likely not have been decided prior to the expiration of the statute of limitations in the underlying personal injury action, the plaintiff commenced this second action in order to preserve his claims.

Since service of the summons and complaint upon Holy Temple Church in Action No. 1 was never effectuated, it did not constitute a prior action pending for purposes of dismissal of Action No. 2 under CPLR Rule 3211(a)(4) (*see Sotirakis v. United Services Automobile Association*, 100 AD2d 931 [2nd Dept 1984]). Commencement of a new action is excusable, given the restrictive deadlines (*see LaBuda v. LaBuda*, 174 AD3d 1013 [3rd Dept 2019]). The merits of the plaintiff's liability and damages claims against Holy Temple Church are adequately set forth at this time in his affidavit (*see* Marchelos Affirmation, Exhibit "S").

Under these circumstances, the alternative relief requested by Holy Temple Church in its motion – consolidation of these two actions – is the more appropriate remedy.

Accordingly, it is hereby

ORDERED that the Decision/Order of Hon. Elizabeth A. Taylor, J.S.C. dated May 29, 2020 is vacated in its entirety; and it is further

ORDERED that the motion by Holy Temple Church (Seq. No. 2) is granted solely to the extent that the action bearing Index No. 34599/2018 in Supreme Court, Bronx County and the action bearing Index No. 27517/2019 in Supreme Court, Bronx County are consolidated under the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

JULIO SANTOS,

Plaintiff,

Index No. 34599/2018

-against-

THE HOLY TEMPLE CHURCH OF THE LORD JESUS CHRIST,
THE HOLY TEMPLE CHURCH OF THE LORD JESUS CHRIST
OF THE APOSTOLIC FAITH, GC SOLUTIONS NY INC.,
COLGATE SCAFFOLDING CORP., COLGATE ENTERPRISE CORP.,
KDK CONSTRUCTION CORP., and NASH ELECTRIC SERVICES, INC.,


Defendants.

and it is further

ORDERED that the Clerk of the Court shall make all necessary entries to effectuate this consolidation.

The foregoing constitutes the Decision/Order of this Court.

DATED: September 15, 2020
Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.