

<b>Sahibdeen v Quraishi</b>
2021 NY Slip Op 33433(U)
August 4, 2021
Supreme Court, Nassau County
Docket Number: Index No. 601711/19
Judge: David J. Gugerty
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. DAVID J. GUGERTY, J.S.C.

-----X TRIAL/IAS PART 24
MAUREEN SAHIBDEEN and ROBERT SAHIBDEEN,

Plaintiff,

- against -

Index No. 601711/19
Mot. Seqs. 03
Submit Date 3/31/21

SHAHEDA AMIN QURAIISHI, M.D., JOHN ACERRA, M.D.,
JOSEPH WOLF, M.D., JOHN DOE, M.D. (the anesthesiologist
that administered anesthesia on October 20, 2016), NORTH
SHORE UNIVERSITY HOSPITAL, NYU LANGONE
AMBULATORY CARE LAKE SUCCESS, NORTHWELL
HEALTH PP NEUROSCIENCE INSTITUTE, NORTHWELL
HEALTH, INC., and NYU LANGONE HEALTH SYSTEM,

Defendants.

-----X

The following papers were read on this motion: NYSCEF Numbered

Notice of Motion, Affirmation, and Exhibits ..... 32-39
Affirmation in Opposition ..... 42
Reply Affirmation ..... 44

Defendant Joseph Wolf, M.D. (hereinafter "Wolf") moves for an order, pursuant to CPLR §308, dismissing the action as against Wolf for lack of personal jurisdiction based upon an alleged failure to effectuate proper service of process; and for such other and further relief as this court may deem just and proper.

Plaintiffs commenced this action through the filing of a Summons and Verified Complaint on February 5, 2019. Service upon Wolf was purportedly effectuated on March 15, 2019 and April 30, 2019 as evidenced by the affidavits of service annexed to Wolf's moving papers (See Exhibit C & D, NYSCEF Docs. 36 & 37).

"Service of process must be made in strict compliance with statutory 'methods for effecting personal service upon a natural person' pursuant to CPLR 308 (Macchia v. Russo, 67 N.Y.2d 592, 594 [1990]; see Dorfman v. Leidner, 76 N.Y.2d 956, 958, 563 N.Y.S.2d 723, 565 N.E.2d 472). CPLR 308 requires that service be attempted by personal delivery of the summons 'to the person to be served' (CPLR 308 [1]), or by delivery 'to a person of suitable age and

discretion at the actual place of business, dwelling place or usual place of abode' (CPLR 308[2])." *Estate of Waterman v. Jones*, 46 A.D.3d 63 (2d Dept. 2007).

Plaintiff argues that Wolf's motion is defective on its face inasmuch as pursuant to CPLR §3211(e), a motion to dismiss based upon lack of jurisdiction must be filed within 60 days of the filing of an answer that asserts this affirmative defense or within 60 days of service of the complaint, if the motion is a pre-answer motion to dismiss. In the instant matter, Wolf asserts, and the record reflects, that no answer was ever filed as Wolf claims that he was never served. Therefore, Plaintiff's argument with respect to CPLR §3211(e) is misplaced.

"A process server's affidavit of service gives rise to a presumption of proper service (*Deutsche Bank Natl. Trust Co. v. O'King*, 148 A.D.3d 776 [2017]; see *Citibank, N.A. v. Balsamo*, 144 A.D.3d 964 [2016]). Bare and unsubstantiated denials are insufficient to rebut the presumption of service (*HSBC Bank USA, N.A. v. Archibong*, 157 A.D.3d 662, 662-663 [2018], quoting *Rosemark Contrs., Inc. v. Ness*, 149 A.D.3d 1115, 1116, 53 N.Y.S.3d 188). However, [a] sworn denial containing a detailed and specific contradiction of the allegations in the process server's affidavit will defeat the presumption of proper service' (*Deutsche Bank Natl. Trust Co. v. O'King*, 148 A.D.3d at 776-777; see *Citibank, N.A. v. Balsamo*, 144 A.D.3d at 964; *Frankel v. Schilling*, 149 A.D.2d 657, 659 [internal quotations omitted])." *Wells Fargo Bank, NA v. Tobing*, 175 A.D.3d 745 (2d Dept. 2019)."

Plaintiff filed two affidavits of service with respect to service of the summons and complaint upon Wolf. The first affidavit of Avatar Neal, dated March 22, 2019 (hereinafter the "Neal Affidavit"), states,

"That on the 15TH day of MARCH 2019, 1:03PM at 956 5TH AVENUE NEW YORK NY 10075 I served the NOTICE OF ELECTRONIC FILING, SUMMONS AND VERIFIED COMPLAINT upon JOSEPH WOLF, M.D. the DEFENDANT therein named by delivering and leaving a true copy or copies of the aforementioned documents with ARI P (REFUSED FULL NAME), OFFICE MANAGER, a person of suitable age and discretion . . . On 03/20/2019 I deposited in the United States mail another true copy of the aforementioned documents properly enclosed and sealed in a post-paid wrapper addressed to the said DEFENDANT at the above address. That being the place of business of the DEFENDANT."

With respect to the Neal Affidavit, Wolf argues that the address where service was purportedly effectuated was not his place of business, stating in his own affidavit:

"3. At no point in time have I ever resided or worked at 956 5th Avenue, New York, NY 10075. I do not know an individual named Ari P. As such, I would not have allowed any such individual to accept service of a summons and complaint on my behalf.  
4. At no point in time have I ever used 956 5th Avenue, New York, NY 10075 as my mailing address. As such, I never received the purported mailing of March 20, 2019 which plaintiff's counsel references in the Affidavit of Service".

As it pertains to the Neal Affidavit, Plaintiff argues that service was properly effectuated, arguing that, "There was an office manager that accepted service and subsequently it was mailed within 20 days to said address". Plaintiff fails to set forth the basis for the process server's having utilized that address at the outset. Notably, the address listed for Wolf on the summons and complaint is 300 Community Drive, Manhasset, New York. Plaintiff provides no documentary support for their assertion that the subject address was Wolf's place of business other than the statement that the papers were delivered to an "office manager" who refused to provide their full name. The Neal Affidavit contains no further statements regarding the process server's interactions with the person upon whom service was effectuated such that it can be established that the subject address was Wolf's place of business.

Service of process was effectuated a second time, without explanation as Plaintiff asserts that the March 15, 2019 service was valid. The second affidavit of Kenneth Wood, dated May 13, 2019 (hereinafter the "Wood Affidavit") states,

"That on the 30TH day of APRIL 2019, 1:37PM at C/O HUNTINGTON HOSPITAL 270 PARK AVENUE HUNTINGTON NY 11743 I served the NOTICE OF ELECTRONIC FILING, SUMMONS AND VERIFIED COMPLAINT upon JOSEPH WOLF, M.D. the DEFENDANT therein named by delivering and leaving a true copy or copies of the aforementioned documents with LAUREN DOE (REFUSED FULL NAME), EXECUTIVE ASSISTANT, a person of suitable age and discretion . . . On 05/08/2019 I deposited in the United States mail another true copy of the aforementioned document properly enclosed and sealed in a post-paid wrapper addressed to the said DEFENDANT at the above address. That being the place of business of the DEFENDANT".

It is undisputed by Plaintiff that, as of the date of service, Wolf was not employed by Huntington Hospital. Wolf has submitted his own affidavit, as well as an affidavit from his former employer, Sandie Luciano, C-TAOME, Administrative Manager, Training Programs Department of Emergency Medicine/Combined Emergency Medicine/Internal Medicine Emergency Medicine/Internal Medicine/Critical Care Emergency Medical Services Fellowship Program Long Island Jewish Medical Center, wherein she states "Joseph Wolf, MD's last date of employment at Huntington Hospital and/or with Northwell Health, Inc. was April 15, 2019, effective April 16, 2019."

In opposition, Plaintiff argues that "the New York State of the Professions still lists the mailing address of JOSEPH WOLF, MD, as Huntington, New York. Also, pursuant to N.Y. Educ. Law § 6502(5) licensees shall notify the department of any change of name or mailing address within thirty days of such change. Failure to register or provide such notice within one hundred eighty days of such change shall be willful failure under section sixty five hundred thirty of this chapter. There has been no change to date." Plaintiff attaches no documentary evidence in support of this assertion, and states that, in any event, the address listed is simply "Huntington, New York", not the full address where service was made according to the Wood Affidavit. Plaintiff does not dispute that the address where process was served on April

30, 2019 was no longer Wolf's business address and fails to provide any documentation to support their assertion that Wolf failed to update his business address with the New York State Office of the Professions, or that the address allegedly on record at the time of attempted service was the address where process was served.

In the instant matter, while a process server's affidavit of service typically creates a rebuttable presumption of proper service, Wolf has specifically and adequately refuted these claims with the Neal and Wood Affidavits. *See, Wells Fargo Bank, NA v. Tobing*, 175 AD3d 745, *supra*. Plaintiff has failed to demonstrate a basis for attempting service at the address utilized by Avatar Neal on March 15, 2019. Further, Plaintiff concedes that the address utilized by Kenneth Wood was not Wolf's business address at the time of service, and fails to set forth a basis for attempting service at that address on that date as they have not demonstrated that Wood failed to update his business address with the New York Department of the Professions.

Accordingly, Defendant Joseph Wolf, M.D.'s motion to dismiss pursuant to CPLR §308 is **GRANTED** as Plaintiff failed to effectuate proper service, and the complaint is dismissed as against Joseph Wolf, M.D. for lack of personal jurisdiction.

All applications not specifically addressed herein are denied.

This constitutes the decision and order of this court.

Dated: August 4, 2021  
Mineola, New York

ENTER:

  
HON. DAVID J. GUGERTY, J.S.C.

**ENTERED**

**Aug 06 2021**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE