

**SoFi Lending Corp. v House**

2022 NY Slip Op 32654(U)

August 5, 2022

Supreme Court, New York County

Docket Number: Index No. 155654/2020

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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SOFI LENDING CORP. AS ATTORNEY IN FACT FOR
DEUTSCHE BANK NATIONAL TRUST COMPANY,
TRUSTEE OF SOFI CONSUMER LOAN PROGRAM
GRANTOR TRUST 2016-3

INDEX NO. 155654/2020

MOTION DATE 8/5/2022

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

DAVID HOUSE,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for EXTEND - TIME

The motion by plaintiff to extend the time to serve defendant is denied and this case is dismissed.

Background

Plaintiff commenced this action on July 23, 2020. It admits in its moving papers that the time to serve defendant expired on November 20, 2020 but demands that this Court give it another 90 days from the date of this decision to serve defendant. In support of the motion, plaintiff points to an affidavit of non-service in which a process server attempted to serve defendant on August 13, 2020 (NYSCEF Doc. No. 7) (almost two years ago). Next, plaintiff contends its counsel sent a request for change of address to the U.S.P.S. on January 29, 2021 and

the address returned was the same one where plaintiff attempted to serve defendant in August 2020.

Counsel for plaintiff insists it then did a search with the DMV on April 13, 2021 and found that the address listed for defendant was, again, the same address plaintiff had on file for defendant. Neither time did plaintiff hire another process server to go back to that address.

### Discussion

“CPLR 306–b provides that service of a summons and complaint shall be made within 120 days of filing the complaint with the clerk of the court. If service is not made within that time frame, a party's time to serve may be extended upon good cause shown or in the interest of justice. This statute provides two distinct standards for an extension of time. The legislative history indicates that the interest of justice standard is a broader standard designed to accommodate late service that might be due to mistake, confusion or oversight, so long as there is no prejudice to the defendant. . . . Thus, a court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including 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 prejudice to defendant” (*de Vries v Metro. Tr. Auth.*, 11 AD3d 312, 313, 783 NYS2d 540 [1st Dept 2004] [internal quotations and citations omitted]).


The Court denies the motion as plaintiff did not meet its burden to show good cause for an extension or that it would be in the interest of justice. The “diligent” efforts detailed by plaintiff demonstrate a lackadaisical attitude towards serving defendant. In the 120-day period to serve defendant, the record submitted on this motion shows that plaintiff made *a single* attempt

to serve defendant and the process server was told by a purported resident of the apartment that defendant did not live there. After that lone attempt, plaintiff did nothing (according to plaintiff) until it sought verification with the post office in January 2021, months after the time to serve defendant had expired. When that search revealed the same exact address, plaintiff, for some reason, did not make another attempt to serve defendant or bring a motion for an extension of time to serve defendant. Instead, plaintiff did nothing for another three months and then asked the DMV for further verification, which revealed that it had the same address for defendant as the post office and plaintiff itself.

Curiously, the moving papers are conspicuously silent about what happened between the DMV search in April 2021 and July 2022 (when plaintiff made this motion). Plaintiff does not claim it did a single thing during this entire time period to serve or locate defendant. And plaintiff's papers do not detail what it plans to do to serve defendant if the Court grants it another 90 days. No reason is given for why plaintiff did not try to serve defendant again at the address that both the DMV and the post office had on file for defendant; certainly, plaintiff must have considered the possibility that the person who claimed defendant did not live there was not truthful. Nor has plaintiff come up with a plan of what will be done if given another 90 days. Simply put, the record before this Court demonstrates the opposite of due diligence—one might consider it indifference or complete apathy—and the Court finds that there is no reason to give plaintiff another three months to serve defendant. This case has already been pending for two years; clearly, plaintiff does not have much interest in pursuing it.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for an extension of time to serve defendant is denied and this case is dismissed for failure to serve defendant.

<u>8/5/2022</u> DATE		 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE