

Mountain Val. Indem. Co. v Buchris
2022 NY Slip Op 34319(U)
December 20, 2022
Supreme Court, New York County
Docket Number: Index No. 653820/2021
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

INDEX NO. 653820/2021

MOUNTAIN VALLEY INDEMNITY COMPANY,

Plaintiff,

MOTION DATE 06/03/2022, 07/26/2022

- v -

MOTION SEQ. NO. 001 002

JOSEPH BUCHRIS, RIFKA RUDITZKY

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 68, 69, 71, 72, 73, 74, 75, 77

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for JUDGMENT - DEFAULT

This action arises out of an underlying personal injury action commenced in Kings County Supreme Court¹. Plaintiff initiated this action seeking declaratory judgment that it has no duty to defend or indemnify the defendants for the underlying action. There are two pending motions and cross-motions before the Court, each will be discussed in turn.

Motion Sequence #001

Defendant, Rifka Ruditzky (Ruditzky), moves to dismiss the complaint on the grounds that service was not properly effectuated, and plaintiff failed to timely disclaim the claim. Plaintiff opposes the motion and cross-moves, for an extension of time to serve the summons and complaint on defendant, Ruditzky, to compel defendant, to accept service of the summons and

1 Rifka Ruditzky v. Joseph Buchris Index No. 525042/2020.

complaint, made on March 15, 2022, pursuant to CPLR § 308(1), *nunc pro tunc*, as timely and proper service. For the reasons set forth below, defendant's motion is denied, and plaintiff's cross-motion is granted.

It is well settled that "extensions of time should be liberally granted whenever plaintiff has been reasonably diligent in attempting service." *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95 [2001]. In any event, the Court of Appeals has made it clear that the "good cause" and "interest of justice" criteria set forth in 306-b provide separate and independent basis for granting an extension of time. *Id.* Pursuant to CPLR § 306-b, the court may extend the time for service upon good cause shown and in the interests of justice.

Here, it is undisputed that the address where plaintiff initially attempted to serve defendant was inaccurate, based on the address provided on the summons in the underlying action. While defendant contends that this argument is somehow meritless, the Court does not agree. Plaintiff has established that it made diligent attempts to serve plaintiff on that address as well as diligent attempts to obtain the correct address and serve the defendant. In light of the specific facts in this action, the Court deems it in the interest of justice to extend the time to serve defendant. The Court finds that the purported service of the summons and complaint on March 22, 2022, was improper, thus plaintiff has 60 days from the date of this order to effectuate proper service.

As to the portion of Ruditzky's motion that seeks dismissal for plaintiff's failure to timely disclaim, the Court will hold this issue in abeyance, as it is related to plaintiff's motion for summary judgment to which the co-defendant, Joseph Buchris, has not responded to.

Motion Sequence #002

Plaintiff moves for default judgment as against defendant Joseph Buchris (Buchris), as well as summary judgment. Buchris cross-moves to compel acceptance of its late answer. For the reasons set forth below, defendant's motion is granted and plaintiff's motion for default is denied and its motion for summary judgment is denied without prejudice with leave to renew.

It is well settled that New York State prefers cases to be settled on the merits. The defendant has established a reasonable excuse for its delay in appearing in this matter. Moreover, defendant has established that acceptance of its answer will not prejudice the plaintiff and thus entitlement for the relief sought, specifically acceptance of its answer to the complaint².

Accordingly, it is hereby

ORDERED that defendant's, Rifka Ruditzky, motion to dismiss is denied and a portion held in abeyance to be raised by counsel in response to plaintiff's motion for summary judgment and plaintiff's cross-motion for an extension of time to serve defendant Ruditsky is granted in part; and it is further

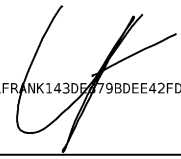
ORDERED that plaintiff is to serve the Summons and Complaint on defendant within 60 days of the date of this order; and it is further

ORDERED that defendant's, Joseph Buchris, answer is deemed timely served *nunc pro tunc*; and it is further

ORDERED that all issues held in abeyance or not addressed in this Decision and Order may be raised in further motions following service of the summons and complaint on defendant Ruditzky discussed above.

² Defendant also moves to vacate a default judgment; however a default judgment has not been entered accordingly that portion of the motion will not be addressed.

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12/20/2022

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE