

Doe v International Socy. for Krishna Consciousness

2023 NY Slip Op 31802(U)

May 23, 2023

Supreme Court, Kings County

Docket Number: Index No. 520637/2021

Judge: Laurence L. Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY**

<p>PRESENT: <u>HON. LAURENCE L. LOVE</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>JOHN DOE,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 63M</p> <p>INDEX NO. <u>520637/2021</u></p> <p>MOTION DATE <u>5/19/23</u></p> <p>MOTION SEQ. NO. <u>002, 003, 004, 005</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
---	--

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16-29, 31, 33, 54, 55, 66

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35-42, 56, 58-61, 67 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 47-53, 57, 62-64, 69-72 were read on this motion to/for AMEND.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73-85, 89 were read on this motion to/for STRIKE.

Upon the foregoing documents, the above motions are decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on August 12, 2021, together with an Order to Show Cause seeking to anonymize the caption. Said complaint alleges that plaintiff was sexually abused by three perpetrators on multiple properties of the International Society for Krishna Consciousness (“ISKCON”) between approximately 1975 and 1978 when Plaintiff was approximately four (4) through seven (7) years old. Neither the premises nor any detail of the three alleged perpetrators were pled with any detail. As described in the affidavit of service filed as NYSCEF Document No. 14, plaintiff attempted to serve defendant by

delivering the pleadings and order to show cause to Dumell Dami, a person authorized to accept same, at 305 Schermerhorn Street, Brooklyn NY 11217.

As established in motion sequence 002, 305 Schermerhorn Street is affiliated with ISKCON and owned by Bharati Center, Inc. a New York Religious Corporation, which purchased the property in 1982 from the Mount Sinai Corporation, a Jewish New York Religious Corporation. As further established in defendant's motion, there is no person known as "Dumell Dani" at said premises and the papers were actually delivered to Bimal Debnath, a volunteer who lives at said temple. ISKCON further argues that the instant action may not be maintained against same as ISKCON is an unincorporated organization.

Following the filing of motion sequence 002, plaintiff served an amended complaint delivering the amended pleadings to "Padra Muna", a person authorized to accept same, at 305 Schermerhorn Street, Brooklyn NY 11217 on December 10, 2021. As described in motion sequence 003, said papers were delivered to Brooke Serotkin a/k/a Bhadra Yamuna, a volunteer working at said temple, who denies that she is authorized to accept process. Said service suffers from the same infirmities as those of the original attempt at service. Said amended complaint amends defendant's name to "International Society for Krishna Consciousness, Inc." and amends the description of same to "ISKCON is world-wide religious movement, managed by the Governing Body Commission "GBC", which is organized and located in Mayapur, India . ISKCON's principal offices are located at 197 S Ocean Ave, Freeport, NY, 11520. ISKCON is a citizen and resident of the State of New York."

Thereafter, plaintiff filed three affidavits of service alleging that on January 4, 2022, defendant was served by delivering a copy of the summons and complaint to Raja (Doe) at 197 S. Ocean Avenue, Freeport NY 11520, that on January 5, 2022, plaintiff delivered two copies of the

summons and complaint to the New York Secretary of State for service upon the “International Society For Krishna Consciousness of 26 Second Avenue, Inc.” and that on January 5, 2022, plaintiff delivered two copies of the summons and complaint to the New York Secretary of State for service upon the “International Society For Krishna Consciousness of Greater New York, Inc.” Following the filing of said affidavits, plaintiff moved under motion sequence 004 for an Order pursuant to CPLR § 305(c), permitting amendment to the Summons renaming International Society for Krishna Consciousness to International Society for Krishna Consciousness, Inc., extending time for Plaintiff to serve International Society for Krishna Consciousness, Inc. pursuant to CPLR § 306(b) and amending the caption pursuant to CPLR § 3025(b).

Upon receipt of the amended summons and complaint, International Society for Krishna Consciousness of 26 Second Avenue Inc. moved under motion sequence 005 seeking to strike the affidavit of service upon same and thereafter in a stipulation dated May 24, 2022, it was stipulated that “Plaintiff is not seeking any relief, at this time, against International Society for Krishna Consciousness of 26 Second Avenue, Inc. s/h/a International Society for Krishna Consciousness.” As such, said motion will be granted.

Leave to amend the pleadings lies within the sound discretion of the Court and should be freely given absent prejudice or surprise to the opposing party. See CPLR 3025(b); *Rosenberg v. New York Univ. Hosp.*, 128 Misc. 2d 90 (Sup. Ct., New York Cty. 1985). As such, motion sequence 004 will be granted, sequence 002 will be denied as moot and sequence 003 will be evaluated on the merits.

Kelley v. Garuda, 57 Misc.3d 1212(A) (Sup. Ct. Nassau Cty. 2017)(rev’d on other grounds 189 A.D.3d 807 (2d Dept. 2020) contains within a lengthy discussion of the formation and structure of ISKCON, which was founded by A.C. Bhaktivedanta, (“Founder”) who incorporated

the International Society for Krishna Consciousness, Inc. (ISKCON, Inc.) on July 13, 1966. In 1970, Founder created a governing board, the GBC, and selected the GBC members that were to succeed him in managing ISKCON, Inc. after his demise. The GBC was vested with the authority to oversee all operations and management of ISKCON, Inc. Upon the Founder's death in 1977, the GBC assumed full management authority as trustees of ISKCON. In the 1980's, all the New York ISKCON properties were sold with the exception of the temple located at 197 S Ocean Ave, Freeport, NY, 11520.

Based upon the discussion in *Kelly v. Garuda*, although ISKCON, Inc. appears to now solely be a corporation which owns a single temple in Freeport, NY, at the time of plaintiff's alleged abuse it appears to have been a corporation which held all of ISKCON's properties in New York. As such, liberally construing plaintiff's complaint, plaintiff may have a cause of action against ISKCON, Inc., requiring at a minimum a modicum of discovery. However, it is indisputable, as discussed supra, that plaintiff has failed to effectuate proper service upon said defendant.

Pursuant to CPLR 306-b, "[s]ervice of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding... If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service."

"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" (*Bumpus v New York City Transit Authority*, 66 AD3d 26, 31-32 [2d Dept 2009]). "[G]ood 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" (*Bumpus*, 66 AD3d at 32).

Here, plaintiff has made multiple unsuccessful attempts to serve defendant with the Amended Summons and Complaint, including delivering the papers to Raja (Doe) at 197 S. Ocean Avenue in Freeport and the delivery of copies of same to the Secretary of State in attempted compliance with BCL § 306. As there will be no prejudice to defendant, it is hereby

ORDERED that motion sequence 004 is GRANTED to the extent that leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed the complaint in this action and Plaintiff is hereby granted an additional one hundred and twenty days from the entry date of this order to serve the summons and complaint in this action upon defendant, International Society for Krishna Consciousness, Inc.; and it is further

ORDERED that motion sequence 002 is DENIED as moot; and it is further

ORDERED that motion sequence 003 is GRANTED to the extent that the affidavit of service filed as NYSCEF Document No. 34 is stricken and denied in all other respects; and it is further

ORDERED that motion sequence 005 is GRANTED in its entirety and the affidavit of service on "International Society for Krishna Consciousness of 26 Second Avenue Inc. sha International Society for Krishna Consciousness," filed as NYSECF Doc. No. 44 is stricken.

5/23/2023
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE