

Rodgers v Vasquez

2023 NY Slip Op 32013(U)

June 15, 2023

Supreme Court, New York County

Docket Number: Index No. 159810/2019

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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MARGARET S. RODGERS,

Plaintiff,

- v -

JOSE VASQUEZ, 1819 WEEKS AVE. REALTY CORP.,
NANCY J. HABER

Defendant.

-----X

INDEX NO. 159810/2019

MOTION DATE 07/30/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 66, 67, 68, 69, 70

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff commenced this action against 1819 Weeks Ave. Realty Corp., her former landlord, Nancy Haber, their managing agent and Jose Vasquez (Vasquez) their alleged employee, seeking damages as a result of Vasquez surreptitiously videotaping plaintiff while she showered in a bathroom provided to her at the Subject Building. Vasquez has not answered herein.

The summons and complaint were filed on October 8, 2019.

An affidavit of service for Jose Vasquez, was filed on February 3, 2020, asserting service on "Jane Smith" a person of suitable age and discretion, found at 514 West 169th Street, #5W, New York, New York 10032, the alleged dwelling place of Vasquez.

Vasquez failed to appear or file an answer, and on June 8, 2020, Plaintiff moved for a default judgment against him. The motion was served on Vasquez, by mail at 514 West 169th Street, Apt #5W, New York, New York 10032.

Vasquez failed to appear or submit opposition, and on October 6, 2020, the motion was granted, and Plaintiff was directed to submit an order, however no order was ever submitted by Plaintiff.

On April 12, 2023, Plaintiff filed a motion seeking an order extending the time to serve the summons and complaint on Vasquez, pursuant to CPLR 306(b), asserting Vasquez was now known as "Mario" Vasquez. The motion was served on Vasquez at 651 West 169th Street, Apartment 21, New York, New York 10032. The motion was returnable on May 3, 2023.

On May 3, 2023, Vasquez appeared and submitted an affidavit in support of an adjournment, requesting more time to respond to the motion. The application was granted, and the motion was adjourned to May 31, 2023.

On May 31, 2023, the motion was submitted without opposition.

CPLR 306-b provides, in pertinent part,

Service of the summons and complaint...shall be made within one hundred twenty days after the filing of the summons and complaint...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 the defendant, or upon good cause shown or in the interest of justice extend the time for service.

In the instant action, Plaintiff claims that at the time the action was commenced she believed Vasquez's name was "Jose Vasquez" and that upon further investigation and receipt of additional information, Vasquez is actually known as "Mario" Vazquez. Plaintiff's counsel's affirmation does not disclose when the "additional" information came to be known.

In support, Plaintiff submits a copy of the police report and a Lexis Nexis public records report for "Mario Vazquez". The police report indicates it was printed out on March 22, 2019, seven (7) months before the summons and complaint were filed in this action. The police report indicates the individual arrested was "Mario" Vazquez, with a home address of 651 West 169

Street, Manhattan, New York. The police report submitted by Plaintiff establishes that she knew from at least seven (7) months prior to commencing this action that Vazquez also went by the name "Mario" and lived at 651 West 169 and not the address originally served with the summons and complaint.

Plaintiff has failed to establish good cause to extend time to serve the summons and complaint, almost four (4) years after the commencement of the action and over four (4) years since the incident that precipitated the action.

In addition, as Plaintiff admits that the initial service on Vasquez was to an incorrect address, the default granted on October 6, 2020, is *sua sponte* vacated.

Wherefore, it is hereby

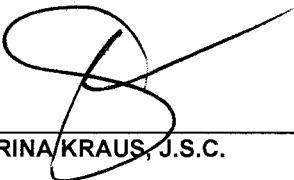
ORDERED that Plaintiff's motion to extend time to serve the summons and complaint is denied; and it is further

ORDERED the default against Jose Vasquez granted on October 6, 2020, is vacated; and it is further

ORDERED that, within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on Defendants, including Jose Vasquez at 651 West 169 Street, Apt 21, New York, New York and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.

<u>6/15/2023</u> DATE		 SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE