

**State Farm Fire & Cas. Co. v Jean-Louis**

2023 NY Slip Op 32042(U)

June 20, 2023

Supreme Court, New York County

Docket Number: Index No. 155755/2022

Judge: Arlene P. 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 P. BLUTH PART 14**

*Justice*

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

EMMANUEL JEAN-LOUIS, JAHIA MILLER, KATELYNN CARMONA, WARREN ESTERA, ABDUL-MASSIH FAMILY HEALTH NURSE PRACTITIONER, P.C., BASIS MEDICAL, P.C., BDS DIAGNOSTIC CORP, CHI CHINESE ACUPUNCTURE, P.C., CITIMED COMPLETE MEDICAL CARE P.C., EMOTE MEDICAL SERVICES, P.C., EMUNA INC, ERIC KENWORTHY, FAMILY HEALTH NP P.C., GIBBONS MEDICAL, P.C., GRACE MEDICAL HEALTH PROVIDER, P.C., HARVEY LEVITAN, MICHAEL ZWIRBLIA, NEW YORK PHYSICAL THERAPY TOUCH PLLC, NORTHEAST MEDICAL DEVICES LLC, NY UNION PHARMACY, INC., PRANEVICIUS MEDICAL P.C., PRISTINE RX CORP., SHERRIE RAWLINS MEDICAL P.C., SPINAL PAIN & REHAB MEDICAL P.C., STAND UP MRI OF BROOKLYN, P.C., STAR OF N.Y. CHIROPRACTIC DIAGNOSTIC, P.C., VUA PHARMACY INC., WALMED EQUIPMENT, LLC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 81, 82, 83, 84, 85, 86, 87, 88, 91

were read on this motion to/for EXTEND - TIME.

**DECISION + ORDER ON MOTION**

Plaintiff’s motion for an extension of time to serve defendants Katelynn Carmona,

Warren Estera, Harvey Levitan, MD and Michael Zwirblia, PSYD is denied.

**Background**

In this no-fault case, the Court previously denied plaintiff’s motion for a default judgment against certain defendants. This action involves plaintiff’s assertion that it need not provide any coverage based upon an insurance policy it issued to defendant Miller because she

misrepresented where she lived (and thereby obtained a cheaper premium for the policy). This Court denied plaintiff's motion on the ground that although plaintiff alleges that Miller actually lived in Brooklyn (rather than the Binghamton address listed on the policy's application), plaintiff failed to explain why it purportedly served Miller at the same exact Binghamton address where it claims Miller does not live.

In that previous motion, the Court also dismissed the case as against defendants Estera and Carmona (they were passengers in the car at the time of the alleged accident) as plaintiff admitted it had not served them. The time to effectuate service had long passed in this action, which was commenced in July 2022.

Now, plaintiff seeks an extension of time to serve these two defendants along with two other defendants (Levitan and Zwirblia). Plaintiff insists that it has hired an investigator to look for each defendant although it has not effectuated service on any of these defendants.

### **Discussion**

As an initial matter, the Court denies the motion to the extent it seeks an extension of time to serve defendants Estera and Carmona as the Court already dismissed the case against these two defendants. Plaintiff did not move to vacate or reargue that decision.

Even on the merits, the Court denies the requested relief against these two defendants. Plaintiff attaches an affidavit of attempted service for Estera in which the process server insists that he was unable to effectuate service because no apartment number was included in the file (NYSCEF Doc. No. 85). But plaintiff offers no explanation for what it did after this attempt in August 2022 and simply argues that it "retained an investigator to determine a current address" (NYSCEF Doc. No. 82, ¶ 15).

CPLR 306-b provides that service must be completed within 120 days and this record describes a single attempt to serve this defendant within that period. Plaintiff did not establish good cause (or that it serves the interest of justice) to extend the time to serve this defendant in a case that was commenced in July 2022.

For defendant Carmona, the Court reaches the same conclusion. Plaintiff submitted an affidavit of service that details a single unsuccessful attempt (NYSCEF Doc. No. 85). Plaintiff's process server was allegedly told that Carmona no longer lived at the address on file. But plaintiff does not detail any other efforts to serve this defendant within the 120-day timeline or explain what it has done to find a good address, other than to vaguely argue that it has hired an investigator.

Similarly, the attempts to serve Zwirblia and Levitan do not evince a sufficient effort to serve these defendants within the 120-day timeline. Plaintiff only attempted to serve each of these two medical provider defendants on a single occasion before bringing this motion. Plaintiff's failure to demonstrate due diligence to serve these defendants (a vague claim that it has hired an investigator) compels the Court to deny the motion.

The CPLR contains a specific timeframe by which a plaintiff has to serve defendants. Here, plaintiff did not effectuate service by the applicable deadline, did not move for an extension before the deadline expired and did not show what it has done to actually effectuate service other than to claim it has hired an investigator (although it is not clear when that happened). Moreover, as detailed above, this motion followed the Court's dismissal as against two defendants for failure to timely effectuate service. The Court cannot extend the deadline set forth in the CPLR because plaintiff appears to be operating on its own timeline.

Accordingly, it is hereby

ORDERED that plaintiff's motion to extend its time to serve certain defendants is denied;  
and it is further

ORDERED that the claims against defendants Zwirblia and Levitan are severed and  
dismissed as plaintiff did not timely serve these defendants.

See NYSCEF Doc. No. 90 about the next conference.

6/20/2023

DATE



ARLENE P. BLUTH, 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