

Madera v City of New York

2023 NY Slip Op 34234(U)

December 5, 2023

Supreme Court, New York County

Docket Number: Index No. 152364/2021

Judge: J. Mabelle Sweeting

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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. J. MACHELLE SWEETING PART 62

Justice

-----X

ANTONIO MADERA,

Plaintiff,

- v -

THE CITY OF NEW YORK, CRAIG W. TIETJEN, WILLIAM
ARNOLD, METEHAN EGILMEZ, OMAR SAAD, DOUGLAS
LOPEZ

Defendants.

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INDEX NO. 152364/2021

MOTION DATE 10/10/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for ALTERNATE SERVICE.

Plaintiff filed a motion seeking an order: (1) pursuant to Civil Practice Law and Rules (“CPLR”) 306-b and 2004, extending plaintiff’s time to serve defendants CRAIG W. TIETJEN, WILLIAM ARNOLD, and METEHAN EGILMEZ¹ with the Second Supplemental Summons and Second Amended Complaint; and (2) pursuant to CPLR 308(5) holding that service of the Second Supplemental Summons and Second Amended Complaint upon defendants CRAIG W. TITJEN, WILLIAM ARNOLD, and METEHAN EGILMEZ is complete upon the certified mailing of the same to each defendant at the United States Park Police Staten Island Unit Headquarters, located at 210 New York Avenue, Staten Island, New York 10305.

¹ On November 15, 2023, counsel for defendant The City of New York informed the court in writing that defendants CRAIG W. TIETJEN, WILLIAM ARNOLD, and METEHAN EGILMEZ were not City employees and the City could not oppose on their behalf.

Arguments Made by Parties

The plaintiff contends and there is no disputes, that defendants The City Of New York, Omar Saad, and Douglas Lopez have all been personally served. Plaintiff contends however, that defendants Craig W. Tietjen, William Arnold, Metehan Egilmez, who are all members of the United States Park Police (“USPP”) collectively, the “Federal Officers” have evaded multiple attempts to effect service of process upon them, thus, plaintiff seeks additional time to effect service upon them and permission to effect service by other means.

Specifically, plaintiff argues that service was first attempted on August 31, 2023, when plaintiff’s process server attempted to serve the Federal Officers at the USPP’s New York Field Office, located at 210 New York Avenue, Staten Island New York, 10305. There, the Federal Officers’ coworkers refused to accept service, claiming that service of process was not permitted at that location. The second attempt at service was on September 19, 2023, when plaintiff’s process server again attempted service at this location. He was again informed by the Federal Officers’ coworkers that the defendants’ employer prohibited service at this address, and was given a phone number for the United States Department of Interior Headquarters, and told to call for a location where service would be accepted. (*See* Affidavits of Attempted Service at NYSCEF Doc. No. 20).

Plaintiff further contends that the process server called the number and was told that service could be effectuated at the Department of the Interior, located at 1849 C St NW, Washington, DC 20240. In a third attempt, the process server attempted to effectuate service at the Washington DC address, but was unable to, as they were advised that no employee of the Department of the Interior was authorized to accept service. (*See* Affidavits of Attempted Service at NYSCEF Doc. No. 20). Subsequently, Tony Irish, an Attorney Advisor from the Department of the Interior, advised that

service should instead be effectuated via certified mail. In a fourth attempt, certified mailings were sent to all three Federal Officers at the Department of the Interior address in Washington DC. (*See* Affidavits of Service at NYSCEF Doc. No. 23).

In a fifth attempt, plaintiff also used public records to ascertain the home addresses for Federal Officer Craig W. Tietjen and Federal Officer Metehan Egilmez, and effectuated personal service at their respective homes in September 2023. (*See* Affidavits of Service at NYSCEF Doc. Nos. 16-17). Plaintiff was unable to locate the home address of Federal Officer William Arnold due to the commonality of his name.

Now, plaintiff argues, all three Federal Officers were served via certified mail to the Department of the Interior, and Federal Officers Tietjen and Egilmez were also served via personal service at their homes.² In an abundance of caution, plaintiff seeks an order from the court stating that alternative service upon the Federal Officers is proper.

² The Affidavit of Service (NYSCEF Doc. No. 25) with respect to this motion shows that the Federal Officers were all served by mail to the USPP's New York Field Office on October 17, 2023.

Conclusions of Law

The caselaw is clear that due process with respect to service does not require the impossible or even the impactable, but rather, the test is one of reasonableness under the circumstances. *See, e.g. Dobkin v Chapman*, 21 NY2d 490 (NYS Ct. of Appeals 1968):

Since the defendants' whereabouts were unknown, rendering normal prescribed methods of service of process upon them impossible [...]

Due process is not, however, a mechanical formula or a rigid set of rules. Increasingly in modern jurisprudence, the term has come to represent a realistic and reasonable evaluation of the respective interests of plaintiffs, defendants and the state under the circumstances of the particular case [...]

Plaintiffs, in cases of that kind, have been expected to do what they reasonably could to inform defendants [...] but, having done so, the negligible likelihood that the methods remaining to them would actually succeed has not deprived plaintiffs of effective rights of action [...]

Undeniably, there are situations in which insistence on actual notice, or even on the high probability of actual notice, would be both unfair to plaintiffs and harmful to the public interest [...]

We recognized that in some cases it might not be reasonably possible to give personal notice, for example, where people are missing or unknown [...]

[internal citations omitted];

LTD Trading Enterprises v Vignatelli, 176 AD2d 571 (1st Dept 1991):


[...] with respect to the individual defendant, Alberto Vignatelli, a resident of Forli, Italy, the IAS court properly directed such service. The record indicates that at considerable expense plaintiff employed the services of an international service company, which was unable to serve this defendant despite many attempts. Considering the facts and circumstances of this case, authorization of service pursuant to CPLR 308 (5) was warranted;

Franklin v Winard, 189 AD2d 717 (1st Dept 1993):

Order, Supreme Court, New York County [...] unanimously affirmed, with costs [...] We find no basis to vacate the order directing service upon defendant-appellant's attorneys pursuant to CPLR 308(5). A showing of impracticability under CPLR 308(5) does not require proof of actual prior attempts to serve a party under the methods outlined pursuant to subdivisions (1), (2) or (4) of CPLR 308 [...]. In this case, the evidence demonstrates that plaintiff had information regarding the appellant's last known residence, which is not equivalent to the actual dwelling place or usual place of abode so as to allow for service pursuant to subdivisions (2) or (4) of CPLR 308 [...]. Further, plaintiff has demonstrated that her efforts to obtain information regarding the appellant's current residence or place of abode through ordinary means, such as a motor vehicle registration search, had proven ineffectual. This sufficiently demonstrates that service under the other methods provided would be "impracticable".

Here, as detailed above, the plaintiff has personally served Federal Officer Tietjen and Federal Officer Egilmez. With respect to Federal Officer Arnold, plaintiff attempted service at two worksites, and also sent a certified mailing, as instructed by an attorney in Federal Officer Arnold's office. Given the totality of the circumstances described, herein, it is hereby:

ORDERED that the relief requested in this motion is GRANTED.

12/5/2023					
DATE			J. MACHELIE SWEETING, J.S.C.		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED		<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<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	