

Garcia v City of New York

2023 NY Slip Op 34239(U)

December 5, 2023

Supreme Court, New York County

Docket Number: Index No. 451019/2022

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21

Justice

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ALFONSO GARCIA, INDEX NO. 451019/2022

Plaintiff, MOTION SEQ. NO. 003

- v -

THE CITY OF NEW YORK, THE DEPARTMENT OF
TRANSPORTATION OF THE CITY OF NEW YORK, NEW
YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA ACCESS-A-RIDE,
CARERIDE PARATRANSIT, LLC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52,)
were read on this motion to/for EXTEND TIME

Upon reading the above listed documents, the Plaintiff's motion to extend the time to serve
Defendant CARERIDE PARATRANSIT, LLC ("CARERIDE") with the summons and complaint,
pursuant to CPLR §306-b is denied.

This action arises out of an alleged August 19, 2019 motor vehicle accident involving a
purported Access-A-Ride vehicle, in which the Plaintiff was a passenger, that occurred at or near
129th Street and Lexington Avenue in Manhattan (NYSCEF Doc. 1).

The Plaintiff commenced this action on June 4, 2020 with the filing of the summons and
complaint (NYSCEF Doc. 1). In the Complaint, the Plaintiff asserts claims against the Defendants
sounding in negligence for personal injuries sustained as a result of the motor vehicle accident.
The Plaintiff also asserts claims against the Defendants for violating unspecified sections of the
New York State Human Rights Law ("NYSHRL") and Administrative Code of the City of New
York ("NYCHRL") for allegedly terminating the Plaintiff's employment and retaliating against
the Plaintiff for her disability (the Plaintiff alleges that she is visually impaired).

Neither the complaint, nor the within motion provide the license plate of the Access-A-
Ride vehicle, nor describe the vehicle either by make or model. Upon a review of the record, the

notice of claim alleges that the Access-A-Ride vehicle was a 2017 Honda bearing New York State license plate T779421C and that it was operated by a Winston Ramirez. Winston Ramirez does not appear to have been named as a Defendant in this matter and the complaint does not specify which Defendant(s) owned the Access-A-Ride vehicle. Nor does the complaint identify which of these distinct and separate Defendants employed the Plaintiff, and the notice of claim does not clarify.

Pursuant to CPLR §306-b, the service of a summons and complaint "... shall be made within one hundred twenty days after the commencement of the action.... 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."

Here, Plaintiff argues that the extension should be granted upon "good cause". However, the Plaintiff has not presented any argument or evidence as to what constitutes "good cause" in this matter. As per the within motion, the Plaintiff asserts that diligent efforts at service were made via three good faith attempts to serve CARERIDE at 63-15 Traffic Ave in Flushing, New York on February 8, 2021, February 9, 2021 and February 10, 2021 (NYSCEF Doc. 51). There is no evidence submitted to this Court verifying that CARERIDE was located and refusing service, or alternatively, that CARERIDE could not be located for service. The Plaintiff does not submit any evidence that 63-15 Traffic Ave in Flushing was an current/appropriate address to serve CARERIDE in 2021. This is particularly concerning as the Plaintiff's February 10, 2021 Affidavit of Due Diligence by process server Givens (NYSCEF Doc. 51), avers that it appeared that the 63-15 Traffic Ave Flushing location had been closed for seven months. Despite this knowledge, there is no evidence submitted regarding any efforts then undertaken by the Plaintiff to locate CARERIDE, its principals or even any insurance carriers. Additionally, there is no evidence that upon undertaking diligent efforts, CARERIDE could not be located or served through the Secretary of State. Thus, the Plaintiff has not shown "good cause" for an extension of time to serve CARERIDE. (*see Johnson v. Concourse Vill., Inc.*, 69 A.D.3d 410, 892 N.Y.S.2d 358 [1st Dept 2010]).

The Plaintiff also argues that the extension should be granted in the "interests of justice". Upon review, in the interest of justice, the extension should be denied. "The interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the

competing interests presented by the parties.... [T]he court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant." (*Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 105–06, 761 N.E.2d 1018, 1025 [2001]; *See Slate v. Schiavone Const. Co.*, 4 N.Y.3d 816, 829 N.E.2d 665 (2005); *see also Marzan v. Petit-Frere*, - - N.Y.S.3d ---- 220 A.D.3d 852 [2d Dept 2023]).

Here, the action was commenced on behalf of the Plaintiff on June 4, 2020. The Plaintiff then had 120 days by which to serve the Defendants (i.e. by October 2, 2020). As per the within motion, the Plaintiff asserts that three good faith attempts were made to serve CARERIDE at 63-15 Traffic Ave in Flushing, New York on February 8, 2021, February 9, 2021 and February 10, 2021 (NYSCEF Doc. 51). However, these purported good faith efforts were not made within the 120-day time frame imposed by CPLR §306-b. Rather, the first attempts at serving CARERIDE were made over four months *after* the time by which to serve CARERIDE had run. The Plaintiff does not allege, or present any evidence of, any attempts at service made after those in February 2021 to the present. Nor, upon a review of the record, does it appear that the Plaintiff previously sought an extension of time to serve CARERIDE. Thus, the within application for an extension, has been made for the first time nearly three years since the time to serve CARERIDE as per CPLR §306-b had run, and over a year since the expiration of the statute of limitations related to negligence claims, as well as, based upon the submitted evidence, her NYSHRL and NYCHRL claims.

Upon review, the Plaintiff has not shown diligent efforts to serve CARERIDE as no evidence has been submitted as to any efforts to locate CARERIDE. Additionally, the initial efforts at service in 2021 were untimely and no efforts were apparently undertaken thereafter to serve CARERIDE. Moreover, this Court is concerned with the fact that the Plaintiff did not expeditiously seek this relief and in fact, pursued the within motion *after* the expiration of the statute of limitations has expired. As there is no evidence that CARERIDE is aware of the Plaintiff's action, it would be substantially prejudicial to allow service of this complaint four years after the accident occurred.

Accordingly, the Plaintiff's motion is denied.

It is hereby

ORDERED that the Plaintiff's motion for an extension of time to serve Defendant CARERIDE PARATRANSIT, LLC with the compliant is denied; and it is further

ORDERED that the Plaintiff shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court within 30 days (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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 www.nycourts.gov/supctmanh).

12/5/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

HON. DENISE M. DOMINGUEZ

J.S.C.