

MDB Dev. Corp. v Maximum Fire Escapes

2023 NY Slip Op 34334(U)

December 10, 2023

Supreme Court, New York County

Docket Number: Index No. 654808/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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MDB DEVELOPMENT CORPORATION,

Petitioner,

- v -

MAXIMUM FIRE ESCAPES,

Respondent.

-----X

INDEX NO. 654808/2023

MOTION DATE 9/29/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12 were read on this motion to/for ALTERNATE SERVICE.

Upon the foregoing documents, the court grants in part Petitioner MDB Development Corporation’s (“Petitioner”) order to show cause, filed under motion sequence 002, to the extent that the court grants Petitioner leave to serve the Verified Petition and related documents within forty-five (45) days of the date of entry of this decision and order with notice of entry and the court authorizes service on Respondent Maximum Fire Escapes (“Respondent”) via service on its authorized agent listed on the New York Department of State, Division of Corporations’ website and via substituted service as set forth herein.

Petitioner brought this Verified Petition against Respondent requesting judgment and an order confirming an arbitration award, by Arbitrator Kevin D. Slakas, dated August 30, 2023, in Petitioner’s favor as against Respondent in the amount of \$68,650.00, plus \$14,849.00 in attorney’s fees, \$1,650.00 for reimbursement of arbitration fees, and 9% interest if the award is not paid within forty-five (45) days. Respondent was represented by counsel at the Arbitration proceeding and fully participated in the proceeding. The underlying dispute involves money

owed to Petitioner regarding an agreement between the parties for Respondent to provide fire escape repair work on a property located in New York County.

Petitioner now moves by order to show cause for an order granting leave to serve Respondent with the Verified Petition and supporting documents and to authorize substituted service, pursuant to CPLR 308(5), by electronic mail or overnight delivery on Max Zeldich, owner of Respondent, and on Respondent's counsel at the arbitration proceeding, Beattie Padovano, LLC, via electronic mail and overnight delivery. In its Verified Petition, Petitioner alleges that Respondent is a foreign corporation, organized and existing under the laws of New Jersey with a place of business located at 141 Frelinghuysen Avenue, Newark, New Jersey 07114.

Petitioner served Respondent with the order to show cause and supporting documents and to date, Respondent has failed to respond or oppose the order to show cause. Additionally, neither party appeared for oral argument scheduled on December 7, 2023.

Petitioner submitted an Affidavit of Attempted Service from a process server indicating in substance that the process server attempted to serve Respondent at its place of business on four occasions, between October 24-27, 2023, but was unable to do so. On one occasion, the process server stated that a woman answered the intercom and said for him to hold, but she never came to the door. The process server stated in substance that he called the telephone number listed on Respondent's work truck, but there was no answer. On another date, the process server stated in substance that there was no answer, despite the light being on in the office.

Pursuant to CPLR 308(5), personal service on a natural person can be made "in such a manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section" (CPLR 308[5]).

Pursuant to CPLR 311(b), if service upon a domestic or foreign corporation within the required 120 days is impracticable under paragraph (a)(1) (service on an officer, director, agent, authorized agent, cashier or assistant cashier) or any other law, then, upon motion without notice, service upon the corporation may be made in such manner as directed by the court (CPLR 311[b]).

If Respondent is a limited liability company, then service on such domestic or foreign limited liability company is governed by CPLR 311-a and includes service on any agent authorized by appointment to receive process, or if service is impracticable, then service may be made in such manner as the court, upon motion without notice, directs (CPLR 311-a[a] and [b]).

Here, since it appears that Respondent is authorized to do business in the State of New York, since the agreement between the parties involved repair work to property located in New York, Petitioner failed to demonstrate that service on Respondent's authorized agent listed on the New York Department of State, Division of Corporations' website, was impracticable or even attempted. However, the court finds that Petitioner diligently attempted to complete personal service on Respondent on four separate occasions, but such service was unsuccessful and proved to be impracticable.

Therefore, the court grants in part Petitioner's motion by order to show cause in that the court grants Petitioner leave to serve Respondent in the following manner within forty-five (45) days of the date of entry of this order with notice of entry and directs Petitioner to serve Respondent on its authorized agent listed on the New York State Department of State, Division of Corporations' website, and by substituted service on Respondent, its owner, Max Zeldich, and its counsel during the arbitration proceeding, Beattie Padovano, LLC, via email and overnight delivery at the addresses set forth in the order to show cause.

The court has considered all arguments raised by Petitioner, but not specifically discussed herein and the court denies any additional request for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants Petitioner MDB Development Corporation leave to serve Respondent Maximum Fire Escapes with the Verified Petition and supporting documents within forty-five (45) days of the date of entry of this order with notice of entry and directs Petitioner to serve Respondent with such documents on Respondent’s authorized agent listed on the New York State Department of State, Division of Corporations’ website, and by substituted service on Respondent, Respondent’s owner, Max Zeldich, and its counsel during the arbitration proceeding, Beattie Padovano, LLC, via email and overnight delivery at the addresses set forth in the order to show cause; and it is further

ORDERED that Petitioner must serve Respondent and Beattie Padovano, LLC, with a copy of this decision and order with notice of entry within twenty (20) days of the date of entry of this decision and order by email and overnight delivery, or email and certified mail, return receipt requested.

This constitutes the decision and order of the court.


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<u>12/10/2023</u> DATE					<u>ERIKA M. EDWARDS, J.S.C.</u>		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" 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