

**Aideyan v Mount Vernon City Sch. Dist.**

2023 NY Slip Op 34922(U)

April 11, 2023

Supreme Court, Westchester County

Docket Number: Index No. 68718/2022

Judge: David S. Zuckerman

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This opinion is uncorrected and not selected for official publication.

**DISPO MOTION # 1**

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ANDREW AIDEYAN, GLADYS AIDEYAN, JEROME  
COUTOU, MOUNA COUTOU, SANDRA E. JAMES,  
ALISHA R. MARRIOTT, HUGH B. MARRIOTT,  
SANDRA OKODUWA, MOAHMMED SALEM,

Plaintiff,

**DECISION & ORDER**

Index No:  
68718/2022

-against -

MOUNT VERNON CITY SCHOOL DISTRICT,

Defendant.

-----X  
**ZUCKERMAN, J.**

The papers numbered 1 through 18 in NYSCEF were considered in connection with Defendant's motion for an Order, pursuant to CPLR 3211 (a) (8) and 306-b, dismissing the action for lack of personal jurisdiction. Plaintiff opposes the motion.

**FACTS**

On November 30, 2022, Plaintiffs commenced this negligence action by filing a Summons and Complaint. In essence, Plaintiffs contend that they suffered property damage due to Defendant's

failure to properly maintain a retaining wall.

#### CONTENTIONS OF THE PARTIES

Defendant asserts that it was never properly served. Defendant points to Plaintiff's Affidavit of Service which indicates that, on December 9, 2022, service was made by merely delivering the Summons and Complaint to its Assistant Superintendent for Curriculum and Instruction, Dr. Jamal Doggett ("Dr. Doggett"). Since Dr. Doggett is not authorized to accept service, Defendant argues that Plaintiff failed to comply with CPLR 311 (a) (7). Consequently, pursuant to 3211 (a) (8), the action must be dismissed.

In support, Defendant submits an Affidavit from Dr. Doggett wherein he avers, *inter alia*, that, on December 9, 2022, outside the Mount Vernon School District office he spoke to an "individual holding paperwork . . . I did not represent or inform the individual that I was authorized to accept or sign any legal documents, correspondence, or packages on behalf of the School District . . . The individual handed me the documents and then left the premises . . . I am not legally authorized to accept legal process of any kind for or on behalf of the School District." Thus, Defendant argues, the Complaint must be dismissed.

Plaintiffs respond that Defendant was properly served. They posit three arguments for denying the motion: (1) as set forth in the Affidavit of Service, Dr. Doggett identified himself as an agent authorized to accept service, (2) Plaintiffs properly served Defendant's district clerk as evidenced by the clerk's "received" stamp on the Summons, and (3) in any event, Dr. Doggett is independently authorized to accept service as his job description is consistent with the statutory definition of school district clerk.

#### DISCUSSION

##### 1. Defendant's Motion to Dismiss

Pursuant to CPLR 3211(a)(8),

A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the court has not jurisdiction of the person of the defendant.

"CPLR 3211(a)(8) is the device that allows a defendant to seek dismissal of an action on the ground that the court lacks personal jurisdiction over her . . . Under paragraph 8, where the defendant duly raises a lack of personal jurisdiction defense, the plaintiff bears the burden of proof on the issue of whether such jurisdiction

exists" (John R. Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, C3211:28). Once a defendant asserts lack of personal jurisdiction, the plaintiff has the burden of proof to establish that such jurisdiction exists (*Shore Pharmaceutical Providers, Inc. v Oakwood Care Center, Inc.*, 65 AD3d 623 [2d Dept 2009]). Typically, the affidavit of a process server constitutes prima facie evidence of proper service (*Nationstar Mortg., LLC v Cohen*, 185 AD3d 1039, 1040 [2d Dept 2020]).

## 2. Propriety of Service on Defendant School District

In *Franz v Bd. of Educ. of Elwood Union Free Sch. Dist.*, 112 AD2d 934, 934-35 (2d Dept 1985), the court held that

"personal service upon a school district must be made by delivering the initiatory papers to a "school officer" as that term is defined in the Education Law (CPLR 311 [7]; 403 [c], [d]). The courts of this State have consistently required strict compliance with the statutory procedures for the institution of claims against the State and its governmental subdivisions, and where the Legislature has designated a particular public officer for the receipt of service of process, we are without authority to substitute another.

In the matter at bar, petitioner did not effectuate service in

strict compliance with CPLR 311 (7). The notice of petition was personally delivered to respondent's secretary, who is not a "school officer" as set forth in the Education Law (see, Education Law §2 [13]). Because strict compliance was required, it is irrelevant that petitioner's process server allegedly relied upon the representations of the secretary and other of respondent's employees that the secretary was authorized to receive service of process. Accordingly, delivery of the notice of petition to the secretary was ineffective to acquire personal jurisdiction over respondent" (internal citations omitted).

Pursuant to CPLR 311 (a) (7), personal service upon a school district must be accomplished via personal delivery to "a school officer, as defined in the education law" (*Baumann & Sons Buses, Inc. v Ossining Union Free Sch. Dist.*, 121 AD3d 1110, 1112-13 [2d Dept 2014]). Pursuant to Education Law § 2 (13), a school officer is

a clerk, collector, or treasurer of any school district; a trustee; a member of a board of education or other body in control of the schools by whatever name known in a union free school district, central school district, central high school district, or in a city school district; a superintendent of schools; a district superintendent; a supervisor of attendance or attendance officer; or other elective or appointive officer in a school district whose duties generally relate to the administration of affairs connected with the public school system.

As an Assistant Superintendent, Dr. Doggett is not a "school officer" (Appeal of Patricia Affronti, 54 Ed Dept Rep, Dec. No. 16,756 [May 8, 2015]; Appeal of Max Eagelfeld, 36 Ed Dept Rep, Dec. No. 13,696 [October 25, 1996]). Plaintiffs' attempt to pigeon-hole Dr. Doggett's job description into that of a school district clerk is misplaced. Consequently, delivering the papers to Dr. Doggett did not constitute proper service.

Plaintiffs argue that the Affidavit of Service establishes proper service. They particularly highlight the process server's allegation that service was made by delivering the commencing documents to Dr. Doggett, an "Authorized Agent who specifically stated he/she was authorized to accept service." While Dr. Doggett denies making such statement, even if he had, the process server's detrimental reliance on that alleged representation does not convert the instant improper service into a statutorily acceptable one (*Exxon Mobil Corp. v New York City Dep't of Env't Prot.*, 178 AD3d 696, 699 [2d Dept 2019])["it is irrelevant that the petitioner's process server allegedly relied upon" incorrect representations of an attorney regarding authority to accept service]). Especially in the context of serving a school district, our courts have required "strict compliance" with applicable statutes (*Franz v Bd. of Educ. of Elwood Union Free Sch. Dist.*, *supra*). Moreover, a court is "without authority to permit service

on an individual not authorized by the Legislature" (*Baumann & Sons Buses, Inc. v. Ossining Union Free Sch. Dist.*, *supra*, at 1113). Consequently, notwithstanding the process server's allegation that Dr. Doggett represented that he was authorized to accept service, strict compliance with CPLR 311 (a) (7) mandates that the court find such service improper.

Likewise misplaced is Plaintiffs' argument that a stamped copy of the Summons, indicating that it was received by Defendant's clerk, is conclusive proof of proper service. Factually, in the Affidavit of Service, the process server never avers that service was made on Defendant's clerk. Moreover, even if the Summons was subsequently date stamped by the clerk, that document does not establish that the process server complied with the statutory mandate to serve "a school officer" (CPLR 311 [a] [7]). In any event, Plaintiff's defect in service is not cured even if Defendant's clerk subsequently received the improperly served Summons (*Krisilas v Mount Sinai Hosp.*, 63 AD3d 887 [2d Dept 2009]). Consequently, Plaintiffs' argument that service was proper, merely based on a date stamp on a copy of the Summons, has no merit.

Finally, as discussed above, Plaintiffs' argument that Dr. Doggett is independently authorized to accept service as his job description is consistent with the statutory definition of school

district clerk is misplaced. Additionally, contrary to Plaintiffs' counsel's representation, the process server never avers that Dr. Doggett stated that he was a clerk for Defendant school district. Consequently, Plaintiffs' argument that service was proper based on Dr. Doggett's status as Defendant's clerk has no merit.

In sum, Plaintiffs have not established proper service. Therefore, Defendant's motion to dismiss for lack of personal jurisdiction must be granted.

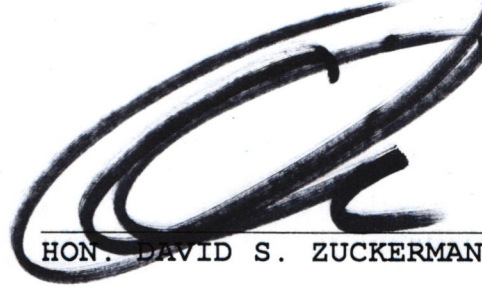
The remaining contentions, if any, do not compel a different result. Any additional relief requested by any party and not expressly considered herein is denied.

Accordingly, based upon the forgoing, it is hereby

**ORDERED**, that the motion by Defendant Mount Vernon City School District, pursuant to CPLR 3211 (a) (8), to dismiss the action for lack of personal jurisdiction is granted and the action is dismissed.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York  
April 11, 2023

A large, bold, handwritten signature in black ink, appearing to be 'D. S. Zuckerman', is written over a horizontal line.

HON. DAVID S. ZUCKERMAN, J.S.C.

TO: All parties via NYSCEF