

Yujuico v Yujuico

2024 NY Slip Op 30187(U)

January 12, 2024

Supreme Court, New York County

Docket Number: Index No. 154597/2022

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 42

Justice

-----X

JOSELITO Z YUJUICO,

Plaintiff,

- v -

ELOINA Z. YUJUICO and ADERITO Z. YUJUICO

Defendants.

-----X

INDEX NO. 154597/2022

MOTION DATE 08/10/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 47 were read on this motion to/for DISMISSAL.

In this action arising from a dispute between siblings over, *inter alia*, the rights of the parties to rental income and/or sale proceeds from two Manhattan condominium units, defendant Eloina Yujuico (Eloina), a Canadian citizen who maintains residences in Vancouver and San Francisco, moves, pre-answer to dismiss the complaint as against her pursuant to CPLR 327, inconvenient forum, and CPLR 3211(a)(7), failure to state a cause of action. While Eloina’s Notice of Motion states only those grounds, in her papers she also argues in substance, *inter alia*, that the court lacks personal jurisdiction due to ineffective service of process (CPLR 3211[a][8]) and the plaintiff’s claims are time-barred (CPLR 3211[a][5]). The plaintiff, Joselito Yujuic (Joselito), a citizen of the Philippines, opposes the motion and cross-moves (1) pursuant to CPLR 306-b to extend his time to serve Eloina by six months or deem service to have been effectuated, *nunc pro tunc*, and (2) pursuant to CPLR 3025(b) for leave to file an amended complaint to add allegations regarding a third apartment owned by the family.

The plaintiff’s cross-motion is granted in part to the extent he seeks relief pursuant to CPLR 306-b to extend the time for service and pursuant to CPLR 3025(b) to serve an amended complaint. Eloina’s motion to dismiss the complaint is denied without prejudice to renew after service of the amended complaint.

CPLR 306-b provides, in relevant part, that “[i]f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall . . . upon good cause shown or in the interest of justice, extend the time for service.” Although a showing of due diligence in attempting to serve a defendant by the initial 120-day deadline must be made in order to establish “good cause” for an enlargement of time to effect service, a discretionary basis for such an enlargement of time may be invoked “in the interest of justice” even where there has been no showing of such diligence. See Leader v Maroney, 97 NY2d 95 (2001). Under the interest of justice standard, in addition to issues of diligence, the “court may consider . . . 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.” Id. at 105-106; see Bumpus v New York City Tr. Auth., 66 AD3d 26 (1st Dept. 2009). Difficulties associated with service abroad through the Hague Convention is a relevant factor in determining whether to enlarge a plaintiff’s time for service of process. See Bumpus v New York City Tr. Auth., supra.

In opposing this branch of the motion, Eloina alleges that she was served with the summons and complaint in this action by a stranger while standing in the hallway of a local courthouse in Vancouver to testify at a probate proceeding concerning the parties’ mother’s estate. Eloina observes that the plaintiff did not move for an extension until she moved to dismiss the complaint, six months after the action was commenced, which was in May 2022. However, the plaintiff hired a private investigator in June 2022, attempted to serve Eloina at two California addresses without success, contacted counsel representing her in the probate proceeding in Vancouver for information and found that the only Vancouver address Eloina provided was a UPS Store in a shopping mall. Also, any further delay will be minimal, the plaintiff’s claims appear meritorious, at least in part, and, as both defendants have been on notice of the action for some time, no prejudice will result. While the plaintiff requests a six-month extension, the court grants a four-month extension.

Defendant Aderito Yujuico, a Filipino citizen, was served in the Philippines pursuant to the Hague Convention and shall be served with the amended complaint in the same manner.

It is well settled that leave to amend a pleading should be freely granted absent evidence of substantial prejudice or surprise, or unless the proposed amendment is palpably

insufficient or patently devoid of merit. See CPLR 3025(b); JP Morgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013); Cherebin v Empress Ambulance Serv., Inc., 43 AD3d 364, 365 (1st Dept 2007). Here, the original complaint largely concerns the parties' dispute over rental income and/or sales proceeds from two condominium units in Manhattan while the proposed amended complaint includes factual allegations regarding a third unit also owned by the family in the same building. No additional causes of action are alleged. In light of that fact, and the early stage of the litigation, no reasonable argument can be made that the proposed amendments will surprise or prejudice any party.

As stated, the court denies Eloina's motion to dismiss without prejudice to renew after service of the amended complaint. In that regard the court notes Eloina's argument that, as set forth in his complaint, many of the plaintiff's claims may be time-barred. Finally, the court notes that no party resides in New York but the plaintiff premises jurisdiction on the subject real property being located in New York.

Counsel for defendant Eloina Yujuico shall provide counsel for the plaintiff an address at which proper service can be made on her in Vancouver, Canada, or stipulate to accept service on her behalf in their New York office.

The parties are encouraged to explore settlement.

Accordingly, upon the foregoing papers and after oral argument, it is

ORDERED that the plaintiff's cross-motion is granted to the extent that his time to effectuate service of process of the summons and complaint upon defendant Eloina Yujuico pursuant to CPLR 306-b, is extended for four months, to May 10, 2024, and he may serve an amended complaint on both defendants pursuant to CPLR 3025(b), and the motion is otherwise denied, and it is further

ORDERED that the proposed amended complaint in the form annexed to the plaintiff's motion papers (NYSCEF Doc. #42), shall be deemed the operative complaint to be served upon the defendants with a copy of this order with notice of entry; and it is further

ORDERED that, within ten days of the date of this order, counsel for defendant Eloina Yujuico shall provide counsel for the plaintiff a true address at which proper service can be made on her in Vancouver, Canada, or stipulate to accept service on her behalf in their New York office, and it is further

ORDERED that the plaintiff shall serve defendants Eloina Yujuico and Aderito Yujuico with the amended summons and complaint and in accordance with the Hague Convention on or before May 10, 2024, and it is further

ORDERED that the defendants shall reply to the amended complaint within 30 days of such service, and it is further

ORDERED that defendant Eloina Yujuico's pre-answer motion to dismiss the complaint is denied without prejudice to renew after service of the amended complaint.

This constitutes the Decision and Order of the Court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

1/12/2024

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER