

Balbuena v City of New York

2024 NY Slip Op 33538(U)

September 9, 2024

Supreme Court, New York County

Docket Number: Index No. 151034/2023

Judge: Jeanine R. Johnson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JEANINE R. JOHNSON PART 52-M
Justice

INDEX NO. 151034/2023
MOTION DATE 05/21/2024
MOTION SEQ. NO. 002
OLGA MIREYA RAMIREZ BALBUENA,
Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, GERARD ANTHONY CIRILLO, OMAR
GARCIA

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33,
34, 35, 36, 39

were read on this motion to/for

DISMISS

Upon the foregoing documents, the Defendant, Omar Garcia's motion pursuant to CPLR
§ 3211(a)(8), is granted without opposition.

LEGAL STANDARD

CPLR § 3211(a)(8) states, "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. On a motion to dismiss pursuant to CPLR 3211(a)(8), the Plaintiff has the burden
of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate
jurisdiction." Coast to Coast Energy, Inc v Gasarch, 149 AD3d 485, 486 (1st Dept 2017); See
Fischbarg v Doucet, 9 NY3d 375 (2007).

CPLR § 302(a) governs acquiring personal jurisdiction by acts of non-domiciliaries and
states, "as to a cause of action arising from any of the acts enumerated in this section, a court

may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

- 1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or
- 2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
- 3) commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
 - (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
 - (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
- 4) owns, uses or possesses any real property situated within the state”.

ARGUMENT

The Defendant, Omar Garcia, asserts New York courts cannot exercise long-arm personal jurisdiction over him because none of the above statutory conditions pursuant to CPLR § 302(a) are met. Defendant Garcia maintains he is a resident and employed in New Jersey; he does not transact business within New York State; the accident which is the catalyst of this complaint and where the Plaintiff was injured occurred in Eatontown, New Jersey; and he does not own, use, or possess any real property in New York State; therefore, the court does not have jurisdiction over him and the matter must be dismissed. *See Zapata v Welder Training & Testing Inst.*, 2020 NY Slip Op 32034(U) (Sup Ct, Bronx County 2020), *Stern v Four Points by Sheraton Ann Arbor*

Hotel, 133 AD3d 514 (1st Dept 2015). The Plaintiff did not oppose Defendant’s motion; thus, she failed to present sufficient evidence to demonstrate jurisdiction. *Coast*, 149 AD3d at 486.

Accordingly, it is hereby

ORDERED, that Defendant, Omar Garcia’s, motion seeking dismissal of the Plaintiff’s action and all cross-claims against him are granted; it is further

ORDERED that the action is severed and continued against the remaining Defendants; it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; it is further

ORDERED that the caption is amended to read as follows:

-----X

OLGA MIREYA RAMIREZ BALBUENA,
Plaintiff,

-v-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, GERARD ANTHONY
CIRILLOO

Defendant(s).

-----X

it is further;

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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).

This constitutes the Decision and Order of the court.

9/9/2024
DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

JEANINE R. JOHNSON, J.S.C.