

Jabed v Doe

2024 NY Slip Op 33691(U)

October 3, 2024

Supreme Court, New York County

Docket Number: Index No. 150513/2024

Judge: James G. Clynes

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.

In opposition to Defendant Heath's motion and in support of his cross-motion, Plaintiff contends that Plaintiff's time within which to serve Defendant Heath has yet to expire. Specifically, Plaintiff contends that the Summons and Complaint was purchased on January 18, 2024 and thus Plaintiff's 120-day period to effectuate service of process is set to expire on Friday, May 17, 2024, which had yet to occur, as of the date of the opposition, April 16, 2024. Plaintiff further contends that Plaintiff has outlined sufficient reasons as to why an extension of time to serve Defendant Heath is warranted. Plaintiff relies on the affirmation of Christopher Baez, in which he affirms that he is employed by Hermes Edge Inc, an office that performs process serving for New York law offices, his office was retained to perform process serving assignment on Defendant Heath, they conducted attempts to serve Defendant Heath at the address 1455 Jessup Avenue, Apt 1C, Bronx, NY 10452, but was told by the current tenant that Defendant Heath no longer lives at that address. Baez further affirmed that he conducted an address search and has not been able to locate a new address at this time.

Plaintiff also submits an affidavit in which he confirms that the contents of the Complaint are true and accurate, and thus, Plaintiff contends, he has a good and meritorious cause of action.

Plaintiff further contends that there is no prejudice to Defendants in permitting an extension of time to serve Defendant Heath, particularly where Plaintiff's deadline has yet to occur.

In reply to Plaintiff's opposition, and in opposition to Plaintiff's cross-motion Defendant Heath contends that at no point does the Process Server, Christopher Baez, state on what date(s) service was attempted upon Defendant Heath. Further, Defendant Heath contends, Baez fails to state on what date(s) the address search was conducted, and thus, it would appear that no attempts were made to effectuate service until sometime after Defendant's motion was made on March 25, 2024.

CPLR 3211 (8) (a) provides that a party may move for judgment dismissing one or more causes of action asserted against him on the ground that the court does not have jurisdiction over the person of the Defendant. When a defendant objects to the court's exercise of personal jurisdiction, the ultimate burden of proof rests upon the plaintiff (*Lowy v Chalkable, LLC*, 186 AD3d 590 [2d Dept 2020]). However, in opposing a motion to dismiss the complaint pursuant to CPLR 3211(a)(8) on the ground of lack of jurisdiction, a plaintiff need only make a prima facie showing that such jurisdiction exists (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60 [1st Dept 2024]).

CPLR 306-b provides, in pertinent part, that service of the summons and complaint shall be made within one hundred twenty days after commencement of the action and that 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 the defendant, or upon good cause shown or in the interest of justice, extend the time for service (CPLR 306-b).

Here, Defendant Heath is correct that Baez's affirmation is incomplete, as it does not specify the date(s) and time(s) service was attempted nor what reasonable efforts, other than an address search, were made to ascertain the address of Defendant Heath. However, the Court finds that this is not fatal since the action was commenced within the limitations period and the constraints of CPLR 306-b had not yet run at the time of the motion and the affirmation of Baez. Further, Defendant Heath has not established that he would be prejudiced by late service, and there is a strong interest of the courts in deciding cases on the merits where possible (*Henneberry v Borstein* 91 AD3d 493 [1st Dept 2012], citing *L-3 Communications Corp. v SafeNet, Inc.*, 45 AD3d 1 [1st Dept 2007]).

Accordingly, in the interest of justice, the court exercises its discretion and Plaintiff's cross motion to extend the time for service of the summons and complaint upon Defendant Heath is granted and Defendant's motion to dismiss for Plaintiff's failure to timely serve Defendant is denied. Accordingly, it is

ORDERED that the motion by Defendant Heath to dismiss Plaintiff's Complaint in its entirety on the grounds that the Court lacks personal jurisdiction based on improper service is denied; and it is

ORDERED that Plaintiff's cross-motion for an extension of time to serve Defendant Heath is granted, and it is further

ORDERED that Plaintiff's time to serve Defendant Heath is extended to 60 days from entry of this order.; and it is further

ORDERED that Plaintiff's time to serve Defendant Heath is extended to 30 days from entry of this order; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon all parties with Notice of Entry.

This constitutes the Decision and Order of the Court.

10/3/2024

DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE