

Halep v Quantum Nutrition Inc.

2025 NY Slip Op 30270(U)

January 24, 2025

Supreme Court, New York County

Docket Number: Index No. 151435/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART **33M**

Justice

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SIMONA HALEP,

Plaintiff,

- v -

QUANTUM NUTRITION INC., DBA SCHINOUSSA SUPER
FOODS, RJ PACKAGING INCORPORATED, GENERAL
INGREDIENT, INC., JOHN DOE

Defendant.

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INDEX NO. 151435/2024

MOTION DATE 10/03/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for EXTEND - TIME.

Upon the foregoing documents, a final submission date of November 8, 2024, there being no opposition, and good cause having been shown, Plaintiff Simona Halep’s (“Plaintiff”) motion for an Order extending the time to complete service of process as to Defendants RJ Packaging Incorporated (“RJ Packaging”) and General Ingredient, Inc. (“General Ingredient”) and deeming service of process complete on Defendant Quantum Nutrition Inc., dba Schinoussa Super Foods (“Quantum”) (collectively “Defendants”) is granted.

I. Background

Plaintiff, a professional tennis player, sues for damages arising from an undisclosed and prohibited substance she ingested after consuming a nutritional supplement (*see generally* NYSCEF Doc. 1). Unbeknownst to Plaintiff, the supplement, which was allegedly manufactured and distributed by Defendants, contained Roxadustat, a substance prohibited by the International Tennis Federation and the World Anti-Doping Agency. As a result, Plaintiff alleges that she has been suspended from competing in sporting events and has suffered \$10,000,000 in damages.

Plaintiff commenced this action against Quantum Nutrition and unnamed defendants on February 15, 2024 (NYSCEF Docs. 1-2). Subsequently, Plaintiff identified RJ Packaging and General Ingredient as defendants involved in the manufacture and sale of the supplement and filed an Amended Complaint on June 12, 2024 (NYSCEF Docs. 16-17).

Defendants' principal place of business is Canada. On July 3, 2024, Plaintiff employed an international process server in compliance with the Hague Convention. Documents were sent to the Central Authority in Canada on July 11, 2024 and were received on July 17, 2024 (NYSCEF Doc. 27). Plaintiff contends that she is unable to further expedite service of process because the documents have been delivered to Canada's Central Authority (*see* NYSCEF Doc. 32). Plaintiff now moves for an Order extending the time to complete service of process on RJ Packaging and General Ingredient by 180 days and to deem service of process complete on Quantum.

II. Discussion

Generally, service of a summons and complaint must be made within 120 days after the commencement of the action (CPLR 306-b). Pursuant to CPLR 306-b, a court may, in the exercise of its discretion, grant an extension of time within which to effect service for good cause shown or in the interest of justice (*Leader v Maroney*, 97 NY2d 95 [2001]). To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service (*Holland v Thiam*, 201 AD3d 546 [1st Dept 2022]).

The Hague Convention requires each signatory state to establish a central authority that receives international service requests and thereafter serves documents "by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law" (*Volkswagenwerk Aktiengesellschaft v Schlunk*, 486 US 694 [1988]). Service of

process may be completed by mail through the signatory state's central authority (*Mut. Benefits Offshore Fund v Zeltser*, 140 AD3d 444, 445 [1st Dept 2016]).

Here, Plaintiff established good cause to extend the time for service of process. The United States and Canada are signatories to the Hague Convention (*New York State Thruway Authority v Fenech*, 94 AD3d 17, 18 [3rd Dept 2012]). Difficulties associated with service through the Hague Convention is a relevant factor in determining whether to extend a plaintiff's time for service of process (*Bumpus v New York City Transit Auth.*, 66 AD3d 26, 883 [2d Dept 2009]). Plaintiff showed reasonable diligence in commencing service of process on Defendants (NYSCEF Docs. 26-28, 32). Plaintiff submitted the affidavit of Mariela Sanchez, who described the acts taken to comply with the Hague Convention (NYSCEF Doc. 32). Further, counsel for Quantum communicated with Plaintiff's counsel in response to service of process, indicating Quantum has knowledge of the lawsuit (NYSCEF Docs. 29-32). Therefore, Plaintiff's motion to extend the time to serve RJ Packaging and General Ingredient and to deem service of process complete on Quantum is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion to extend time for service of process to Defendants RJ Packaging Incorporated, and General Ingredient, Inc. is granted; and it is further

ORDERED that Plaintiff's time to serve Defendants RJ Packaging Incorporated and General Ingredient, Inc. is extended to 180 days from entry of this Decision and Order; and it is further

ORDERED that Plaintiff's service of process on Defendant Quantum Nutrition Inc., d/b/a Schinoussa Super Foods is complete, and Quantum shall file its answer within 20 days from service of this Decision and Order; and it is further

ORDERED that on or before April 8, 2025, the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail at bgilmartin@nycourts.gov. In the event the parties are for some reason unable to agree to a proposed preliminary conference order, the parties shall appear for an in-person preliminary conference on April 9, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within 10 days of entry, Plaintiff shall serve a copy of this Decision and Order on all active parties with notice of entry via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>1/24/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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