

**Shamblee v Universal Protection Serv., LLC**

2025 NY Slip Op 30328(U)

January 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 526535/2021

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23<sup>rd</sup> day of January 2025.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

-----X  
JOHN SHAMBLEE,

Plaintiff,

-against-

UNIVERSAL PROTECTION SERVICE, LLC  
d/b/a ALLIED UNIVERAL SECURITY SERVICES, INC. BD HOTELS, LLC, BD NY HOTELS, LLC, and THE WATSON HOTEL, S&J SECURITY CORPORATION a/k/a S&J SECURITY, INC., S&J SECURITY NY, INC. and SJ SOLUTIONS SECURITY & PROTECTION SERVICES,

Defendants.  
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The following e-filed papers read herein:

**DECISION & ORDER**

Index No.: 526535/2021

Mot Seq. No. 1

NYSEF Doc Nos.:

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In this action, Plaintiff John Shamblee (“Plaintiff”) seeks damages for personal injuries allegedly sustained on or about November 17, 2020 at the Watson Hotel as a result of an assault by a security officer(s) employed by the defendants.

Defendant SJ Solutions Security & Protection Services, Inc. (“SJ Solutions”) moves for an order, pursuant to CPLR 3211, dismissing Plaintiff’s Amended Complaint and any cross-claims against it on two grounds: (1) the Court lacks personal jurisdiction over SJ Solutions because

Plaintiff never effectuated service of process of the Supplemental Summons and Amended Complaint;<sup>1</sup> and (2) the statute of limitations time bars all of Plaintiff's claims.

Plaintiff opposes the motion on the basis that the motion contains (i) misrepresentations of facts, (ii) inapplicable case law, (iii) improper application of relevant statutes, (iv) incomplete and inaccurate chain of events, and (v) "other various methods in which [SJ Solutions] attempt[s] to manipulate the Court." In his opposition, Plaintiff submits an affidavit from the process server, who states that he did attempt personal service upon SJ Solutions multiple times at different locations and ultimately nailed and mailed the supplemental summons and amended complaint on December 22, 2022. The process server, due to personal issues, did not provide an affidavit of service until February 5<sup>th</sup> or 6<sup>th</sup>, 2024.<sup>2</sup>

In its reply, SJ Solutions argues that Plaintiff's purported service is not in compliance with CPLR 306-b or 311. SJ Solutions further notes that Plaintiff did not make an application to permit alternative service. In his affidavit, Omowale St. Juste, the president and CEO of SJ Solutions, acknowledges that SJ Solutions conducts business at the address listed on the affidavit of service; however, he denies the he or any member of his staff received service by posting or by mail and disputes the description of the location where the papers were affixed.<sup>3</sup> In addition, SJ Solutions asserts that service by mail was not properly effectuated because Plaintiff did not produce an acknowledgment form required by CPLR 312-a (d).

Defendants BD Hotels LLC, and BD NY Hotels, LLC, d/b/a & i/s/h/a The Watson Hotel (the "Hotels") filed an opposition, requesting that if the Court dismisses Plaintiff's claims against SJ Solution, the Court should convert their cross-claims against SJ Solutions into third-party claims and amend the caption accordingly.

Defendants Universal Protection Services, LLC, d/b/a Allied Universal Security Services and FJC Security Services, Inc. (collectively, "Allied") oppose the motion on the grounds that Plaintiff's affidavit and the affidavit of service demonstrate diligence in effectuating service. Alternatively, Allied asks the Court to grant Plaintiff an extension of time to serve SJ Solutions.

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<sup>1</sup> Service of the Plaintiff's initial complaint is not at issue since SJ Solutions was first named as a defendant in the Amended Complaint.

<sup>2</sup> SJ Solutions' motion was filed on December 11, 2023.

<sup>3</sup> The affidavit of service states that the supplemental summons and amended complaint "were secured to a black steel door with adjoining yellow walls with grey tile floors" (NYSCEF Doc. No. 34). Mr. St. Juste provides a photograph indicating that the door to SJ Solutions is "wooden with a large window" and the "walls of the hall are grey blue and the flooring is white/grey with black design" (NYSCEF Doc No. 41, ¶¶ 8-9).

Allied also requests that if SJ Solutions' motion is granted, the Court convert its cross-claims for common law indemnification and contribution into third-party claims.

In reply to co-defendants Hotels and Allied's oppositions, SJ Solutions concedes that they would be entitled to have their respective cross-claims converted into third-party claims. However, SJ Solutions asks that the Court require co-defendants to properly effect service upon it pursuant to CPLR 311.

"The plaintiff bears the ultimate burden of proving by a preponderance of the evidence that jurisdiction over the defendant was obtained by proper service of process" (*Bankers Tr. Co. of California, N.A. v Tsoukas*, 303 AD2d 343, 343 [2d Dept 2003]). Pursuant to CPLR 311 (a) (1), personal service upon a domestic or foreign corporation "shall be made by delivering the summons . . . to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service." Service of process can also be made pursuant to Business Corporation Law 306 or 307 (CPLR 311 [a] [1]). The CPLR also provides that if service within 120 days, as required by CPLR 306-b, is impracticable then "service upon the corporation may be made in such manner, and proof of service may take such form, as the court, upon motion without notice, directs" (CPLR 311 [b]).

Here, it is undisputed that Plaintiff did not serve SJ Solutions pursuant to CPLR 311 (a) (1). It is further undisputed that Plaintiff did not make a motion for alternative service. While Plaintiff resorted to "nail and mail" service, this method of service applies only to individuals (*Knopf v Sanford*, 132 AD3d 416, 417 [1st Dept 2015] [" 'Nail-and-mail' substitute service was ineffective because that method of service is only appropriate for serving individuals, not corporate entities"]); *see also Lakeside Concrete Corp. v Pine Hollow Bldg. Corp.*, 104 AD2d 551, 552 [2d Dept 1984] *aff'd* 65 NY2d 865 [1985] [finding that service on a corporate officer, pursuant to CPLR 308 [2], does not confer jurisdiction to corporations]). Moreover, Plaintiff did not attempt to serve SJ Solutions through the Secretary of State, which is explicitly allowed by Business Corporation Law § 306 and CPLR 311. Thus, even if "nail and mail" on a corporate entity was permitted, Plaintiff had not exhausted every possibility of proper service before attempting that method of service.

Accordingly, it is hereby

ORDERED, that SJ Solutions Security & Protection Services, Inc.'s motion to dismiss (Mot. Seq. No. 1) is granted to the extent that Plaintiff's Amended Complaint is dismissed as against it; and it is further

ORDERED, that any cross-claims asserted by the other defendants against SJ Solutions are dismissed without prejudice; and it is further

ORDERED, that third-party claims may be asserted against SJ Solutions provided that service upon SJ Solutions is made pursuant to CPLR 311 and within 120 days of filing of the third-party summons and complaint in accordance with CPLR 1007.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



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HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**