

Tabas v City of New York

2025 NY Slip Op 30504(U)

February 11, 2025

Supreme Court, New York County

Docket Number: Index No. 157809/2021

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

-----X

ALVARO TABAS,

Plaintiff,

- v -

CITY OF NEW YORK, OFFICER PERALTADEL, DOES 1-10, INCLUSIVE

Defendant.

-----X

INDEX NO. 157809/2021

MOTION DATE 02/04/2025

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119

were read on this motion for

DEFAULT JUDGMENT

Plaintiff Alvaro Tabas (“Plaintiff”) moves for default judgment against Officer Yorkt Peraltadeljesus (“the Officer”), alleging that the Officer failed to timely answer the amended complaint. Defendant, the City of New York (“the City”), opposes Plaintiff’s motion and cross-moves to dismiss the complaint against the Officer on the grounds of lack of personal jurisdiction and the statute of limitations. Plaintiff further opposes the City’s cross-motion and cross-moves for an extension of time to serve the Officer.

PROCEDURAL HISTORY

Plaintiff commenced this action on August 17, 2021, initially naming “Officer Beraltal” as a defendant. No affidavit of service was filed as to this officer. On May 26, 2023, the City, in response to a case scheduling order, identified the Officer as Yorkt Peraltadeljesus. Plaintiff subsequently moved on August 24, 2023, to amend the caption to substitute Officer Beraltal with Officer Peraltadeljesus. This Court granted Plaintiff’s motion on February 21, 2024, but only to the extent of Plaintiff’s federal claims under 42 U.S.C. § 1983. Plaintiff filed an amended complaint on NYSCEF on September 27, 2023, though an April 8, 2024, filing date is inconsistently referenced by the parties.

On August 11, 2024, Plaintiff moved to renew and reargue this court’s February 21, 2024, order. On September 4, 2024, this court denied the motion and explicitly rejected Plaintiff’s claim that the Officer was in default, as no proof of service of the summons and complaint had been provided.

Plaintiff subsequently served the Officer on September 16, 2024. On December 24, 2024, Plaintiff moved for default judgment, alleging that more than 30 days had passed since service

without an answer being interposed. The City opposed and cross-moved to dismiss on grounds that Plaintiff failed to serve the Officer within the required 120-day period under CPLR § 306-b, and that the claims were time-barred under the applicable three-year statute of limitations.

ARGUMENTS

Plaintiff asserts that the City's cross-motion is procedurally defective and untimely, arguing that it should not be considered by the court. Plaintiff further contends that the City, through its conduct, informally appeared on behalf of the Officer, thereby rendering service on Corporation Counsel proper. Plaintiff argues that the claims under 42 U.S.C. § 1983 were timely commenced within the three-year statute of limitations. Additionally, Plaintiff maintains that if service is deemed improper, the court should exercise its discretion and grant an extension of time to serve the Officer in the interest of justice under CPLR § 306-b, emphasizing the absence of prejudice to the Officer and Plaintiff's good faith reliance on communications from Corporation Counsel.

The City counters that Plaintiff failed to effectuate service on the Officer within the required 120-day period following amendment of the complaint, thereby depriving the Court of personal jurisdiction over the Officer. The City further argues that Plaintiff's claims against the Officer are untimely, as they accrued on September 3, 2020, and the statute of limitations expired on November 4, 2023. Moreover, the City asserts that filing documents on NYSCEF does not constitute proper service and emphasizes that service was not effectuated until September 16, 2024, which falls well beyond the statutory deadline. As such, the City contends that Plaintiff's claims must be dismissed in their entirety.

DISCUSSION

I. Plaintiff's Motion for a Default Judgment

Plaintiff's motion for default judgment is DENIED. A plaintiff seeking a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint on the defendant, evidence of the facts constituting the claim, and proof of the defendant's default (CPLR § 3215[f]). As noted in *Feffer v. Malpeso*, 210 AD2d 60, 61 (1st Dept 1994), "the standard of proof is not stringent, amounting only to some firsthand confirmation of the facts." Likewise, *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 71 (2003) holds that "[d]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them." Nevertheless, *Guzetti v. City of New York*, 32 AD3d 234, 235 (1st Dept 2006) explains that "CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (internal quotations and citations omitted).

As highlighted above, under CPLR § 3215(f), a motion for default judgment must be supported by proof of proper service and an affidavit of the facts constituting the claim. Here, the court finds that Plaintiff has not satisfied this requirement, as service was not effectuated until after the expiration of the statutory period. The Court of Appeals has held that strict compliance with

CPLR § 3215(f) is necessary to obtain a default judgment (*Woodson*, 100 NY2d at 71, *supra*). In the instant matter, Plaintiff's failure to timely serve the summons and complaint precludes entry of a default judgment against Officer Peraltadeljesus.

Furthermore, the statutory framework governing default judgments requires that the moving party provide a basis for relief by establishing that the defaulting defendant was properly served and had a reasonable opportunity to respond. Courts have consistently denied motions for default judgment where service was either defective or untimely (*Giglio v. NTIMP, Inc.*, 86 AD3d 301 [2d Dept 2011]). Here, the record establishes that the Officer was not served until September 16, 2024, which was beyond the period mandated by CPLR § 306-b.

Accordingly, Plaintiff's motion for default judgment is without merit and must be denied.

II. City's Cross-Motion to Dismiss

The City's cross-motion is GRANTED. Under CPLR § 306-b, a plaintiff must serve a defendant within 120 days after filing the complaint. CPLR § 306-b permits the court to extend the time for service "upon good cause shown or in the interest of justice." While "good cause" requires a showing of reasonable diligence, the "interest of justice" standard is broader and may encompass late service due to "mistake, confusion or oversight," provided that no prejudice is caused to the defendant (*see Baumann & Sons Buses, Inc. v. Ossining Union Free School Dist.*, 121 AD3d 1110 [1st Dept 2014], *citing Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95, 105 [2001]; *also see Nicodene v. Byblos Restaurant, Inc.*, 98 AD3d 445 [1st Dept 2012]; *Henneberry v. Borstein*, 91 AD3d 493 [1st Dept 2012]).

Here, Plaintiff failed to serve the Officer within the 120-day period prescribed by CPLR § 306-b. The Officer was first named as a defendant following the February 21, 2024, order, with Plaintiff allegedly filing the amended complaint on April 8, 2024¹ (though this date is not reflected in NYSCEF). Even if assuming April 8, 2024, was the correct filing date, service was required by August 6, 2024. Plaintiff did not serve the Officer until September 16, 2024, beyond the statutory timeframe. Failure to serve within 120 days deprives the court of personal jurisdiction (*Goldstein Group Holding, Inc. v. 310 E. 4th Hous. Dev. Fund. Corp.*, 154 AD3d 458 [1st Dept 2017]).

The failure to timely serve the Officer is particularly significant given the longstanding jurisprudence emphasizing the necessity of compliance with CPLR § 306-b. In *Leader*, 97 NY2d 95, *supra*, the Court of Appeals highlighted that dismissal is warranted where service is untimely absent a showing of good cause or the interest of justice. The "good cause" standard requires diligent efforts in attempting service within the prescribed timeframe. The "interest of justice" standard, in contrast, permits broader judicial discretion, including consideration of the statute of limitations, the strength of the plaintiff's claims, and any prejudice to the defendant.

In the present case, Plaintiff has failed to establish "good cause" as there is no evidence of diligent efforts to serve the Officer within the 120-day period. Courts have consistently held that inadvertence or law office failure does not constitute good cause (*Bumpus v. New York City Transit*

¹ At oral argument before the court on February 11, 2025, the parties agreed that April 8, 2024 was the operative filing date of the amended complaint.

Authority, 66 AD3d 26 [2d Dept 2009]). Additionally, Plaintiff's request for an extension under the "interest of justice" standard is unpersuasive. The statute of limitations expired on November 4, 2023, and an extension at this stage would unduly prejudice the Officer by forcing him to litigate claims that are now time-barred.

As such, the court finds no basis to grant Plaintiff additional time for service, and the City's motion to dismiss is granted.

III. Statute of Limitations

The City correctly asserts that Plaintiff's claims against the Officer are time-barred. Under 42 U.S.C. § 1983, a three-year statute of limitations applies (*Owens v. Okure*, 488 US 235 [1989]). The latest possible accrual date for Plaintiff's claims was September 3, 2020, when his criminal prosecution was dismissed. Allowing for the COVID-19 tolling period, the latest permissible filing date was November 4, 2023. Plaintiff filed his motion to amend the complaint on August 4, 2023, before this deadline, but service on the Officer was not effectuated until September 16, 2024. Therefore, the claims against the Officer are untimely and must be dismissed.

Statutes of limitation serve a vital function in ensuring fairness and repose for defendants. As such, courts will not permit amendments to relate back to an original pleading when a new defendant is added beyond the statutory period absent compelling justification (*Buran v. Coupal*, 87 NY2d 173, 178 [1995]). In this case, no such justification exists, and Plaintiff's claims are thus untimely.

IV. Plaintiff's Cross-Motion for an Extension of Time to Serve

Plaintiff seeks an extension of time to serve the Officer under CPLR § 306-b. The "interest of justice" standard articulated in *Leader*, 97 NY2d 95, *supra*, permits the court to evaluate a range of factors, including the diligence of the plaintiff, the existence of meritorious claims, and potential prejudice to the defendant. Here, Plaintiff's lack of diligence in serving the Officer weighs heavily against granting an extension.

Moreover, granting an extension would undermine the finality of litigation. As the Appellate Division, First Department, has noted, courts should be reluctant to extend time for service when the statute of limitations has already expired, as doing so would effectively revive otherwise time-barred claims (*Khedouri v. Equinox*, 73 AD3d 532 [1st Dept 2010]). The court also notes that Plaintiff's argument regarding the City's purported informal appearance lacks merit. The mere fact that Corporation Counsel participated in motion practice does not constitute a waiver of jurisdictional defenses.

Given these considerations, Plaintiff's request for an extension of time is denied.

For the reasons stated above, it is

ORDERED that Plaintiff's motion for default judgment is DENIED; and it is further

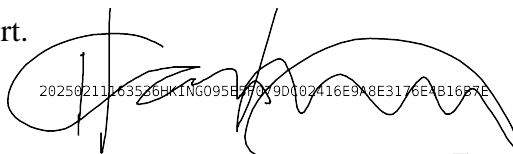
ORDERED that the City’s cross-motion to dismiss is GRANTED; and it is further

ORDERED that Plaintiff’s cross-motion for an extension of time to serve is DENIED; and it is further

ORDERED that the complaint against Officer Yorkt Peraltadeljesus is dismissed with prejudice; and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint as against Officer Yorkt Peraltadeljesus, with prejudice, accordingly.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

2/11/2025

DATE

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