

210 Wash. Notebuyer LLC v Bolis

2025 NY Slip Op 31319(U)

April 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 529732/21

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 9th day of April, 2025.

P R E S E N T:

HON. CENCERIA EDWARDS,

Justice.

-----X
210 WASHINGTON NOTEBUYER LLC,

Plaintiff,

- against -

Index No. 529732/21

BERNADETTE M. BOLIS, MAHROUSE Y. BOLIS, and “JOHN DOE NO. 1” to “JOHN DOE NO. XX,” inclusive the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons, or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross Motion and Affidavits (Affirmations) _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

4-9 12-13
13 16-18
16-18

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 210 Washington Avenue in Brooklyn (Block 1903, Lot 44) (Property), defendants Bernadette Bolis and Mahrouse Bolis (the Bolis Defendants) move (in motion sequence [mot. seq.] one) for an order, pursuant to CPLR 3211 (a) (8), dismissing the complaint for lack of personal jurisdiction (NYSCEF Doc No. 4).

Plaintiff 210 Washington Notebuyer LLC (Plaintiff) cross-moves (in mot. seq. two) for an order, pursuant to CPLR 306-b, extending the time within which to serve the Bolis Defendants (NYSCEF Doc No. 12).

Background

On November 16, 2021, Plaintiff commenced this foreclosure action by e-filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-2).

On January 17, 2022, the Bolis Defendants answered the complaint, denied the material allegations therein and asserted affirmative defenses, including lack of personal jurisdiction because “Defendants were not properly served with the summons and complaint” (NYSCEF Doc No. 3 at ¶¶ 27-28).

Plaintiff failed to file an affidavit of service upon the Bolis Defendants with 120 days after commencement of this action, or by March 16, 2022.

The Bolis Defendants’ Dismissal Motion

On March 17, 2022, within sixty days after raising an objection to personal jurisdiction in their answer,¹ and more than 120 days after commencement of this action, the Bolis Defendants moved to dismiss the complaint for lack of personal jurisdiction (NYSCEF Doc No. 4). The Bolis Defendants, who are husband and wife, each submit an

¹ CPLR 3211 (e) provides, in relevant part, that “an objection that the summons and complaint . . . was not properly served is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading.”

affidavit attesting that they reside at the Property and “[a]t no point was I ever served with the summons and complaint in this action” (NYSCEF Doc Nos. 8 at ¶ 5 and 9 at ¶ 5). Defense counsel also submits an affirmation asserting that “[a]s of the date of this motion, one hundred twenty (120) days have passed since Plaintiff commenced this action and no service has been effectuated on either Defendant” (NYSCEF Doc No. 5 at ¶ 4). Defense counsel asserts that lack of personal jurisdiction was preserved in the answer and dismissal is mandated pursuant to CPLR 306-b (*id.* at ¶¶ 11 and 14).

Plaintiff’s Opposition and Cross-Motion

On May 31, 2022, Plaintiff opposed the Bolis Defendants’ dismissal motion and cross-moved to extend the time to serve the Bolis Defendants, pursuant to CPLR 306-b (NYSCEF Doc No. 12). Plaintiff submits an attorney affirmation generally asserting that “as of the making of this application, *Defendant* has been served and Plaintiff merely seeks an enlargement of time to address the oversight which occurred solely as a mistake and of which *Defendant* suffered no prejudice” (NYSCEF Doc No. 13 at ¶ 5 [emphasis added]). Plaintiff’s counsel explains that the lack of service was due to an “administrative error on the part of Plaintiff’s counsel” (*id.* at ¶ 14). Plaintiff’s counsel notes that an extension of time to serve is in the court’s discretion and such motions are routinely granted (*id.* at ¶ 7).

Notably, on June 1, 2022, Plaintiff’s counsel e-filed two affidavits of service attesting that on May 28, 2022, at approximately 12:56 p.m., the Bolis Defendants were served with the summons and complaint by delivery to “Alicia” at the Property, yet there was no subsequent mailing of the summons and complaint (NYSCEF Doc Nos. 14 and 15).

The Bolis Defendants' Opposition and Reply

The Bolis Defendants, in opposition to Plaintiff's cross-motion and in reply, submit an attorney affirmation asserting that Plaintiff's affirmation in support of its cross-motion is defective because it was not submitted with a word count certification, as required by 22 NYCRR § 202.8-b (c) (NYSCEF Doc No. 16 at ¶¶ 8-9).

Defense counsel further argues that if the court overlooks the procedural defects, "it must not overlook [the] lack of substance . . ." (*id.* at ¶ 12). Defense counsel asserts that "Plaintiff failed to timely move for relief . . . and has demonstrated no facts that would support such relief" (*id.* at ¶ 14). Defense counsel claims that Plaintiff failed to demonstrate good cause for an extension under the interest of justice standard:

“[u]nder the interest of justice standard, the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the statute of limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant.

...

“In weighing these factors, this Court should take notice that Plaintiff requested an extension of time to serve well after the 120 days had passed, and two and a half months after Defendants' motion to dismiss was made. The statute of limitations has not expired and Plaintiff has not shown that is has a meritorious cause of action. In fact, no affidavit from Plaintiff has been provided, nor is the complaint even verified. As such, we are left with nothing more than counsel's allegations” (*id.* at ¶¶ 18-19).

Defense counsel also points out that the affidavits of service belatedly filed by Plaintiff on June 1, 2022, do not reflect that the Bolis Defendants were properly served by mail after the summons and complaint were delivered to “Alicia” at the Property (*id.* at ¶ 22).

Discussion

CPLR 306-b directs that:

“[s]ervice of the summons and complaint . . . shall be made within one hundred twenty days after the commencement of the action or proceeding. . . . 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 that defendant, or upon good cause shown or in the interest of justice, extend the time for service.***” (emphasis added).

Here, it is undisputed that Plaintiff failed to comply with CPLR 306-b as it failed to effect service upon the Bolis Defendants within 120 days after commencement, or by March 16, 2022. However, Plaintiff, upon realizing its administrative error, cross-moved for an extension of time within which to serve the Bolis Defendants. “CPLR 306-b permits a court, in the exercise of its discretion, to extend the time to serve process upon good cause shown or in the interest of justice” (*DeMartino v Harris*, 167 AD3d 568, 569 [2d Dept 2018]). “The interest of justice standard requires a court to carefully analyze the factual setting of the case and to balance the competing interests presented by the parties” including “the promptness of a plaintiff’s request for the extension of time, and prejudice to defendant” (*PNC Bank, Nat’l Ass’n v Sarfaty*, 225 AD3d 721, 722 [2d Dept 2024]).

Here, although Plaintiff failed to move for an extension pursuant to CPLR 306-b before the expiration of the 120-day period for personal service, Plaintiff cross-moved for

an extension of time within which to serve the Bolis Defendants in direct response to the Bolis Defendants' dismissal motion. Under these circumstances, this court determines that an extension for service is warranted so that this action may be determined on the merits. Accordingly, it is hereby

ORDERED that the Bolis Defendants' dismissal motion (mot. seq. one) is denied as moot; and it is further

ORDERED that Plaintiff's cross-motion (mot. seq. two) for an extension of time within which to serve the Bolis Defendants with process is granted, pursuant to CPLR 306-b, and Plaintiff shall serve the Bolis Defendants with process within 30 days after service of this decision and order with notice of entry thereof.

This constitutes the decision and order of the court.

E N T E R,

April 9, 2025



Hon. Cenceria P. Edwards, J.S.C.