

Worsham v City of New York

2025 NY Slip Op 33656(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 161880/2023

Judge: Ariel D. Chesler

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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. ARIEL D. CHESLER PART 62M

Justice

-----X

JULIUS EARL WORSHAM JR,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY HOUSING
AUTHORITY

Defendant.

-----X

INDEX NO. 161880/2023

MOTION DATE 03/18/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

In this proceeding, defendant New York City Housing Authority (“NYCHA”) moves for an Order pursuant to CPLR 3211, granting dismissal of the Complaint as to NYCHA for lack of personal jurisdiction, or in the alternative, granting a traverse hearing.

This action arises out of personal injuries allegedly sustained by plaintiff on February 15, 2023. Plaintiff filed a Summons and Verified Complaint on December 17, 2023. On July 18, 2024, plaintiff filed a motion for default judgment against the City of New York (“the City”) and NYCHA for failure to answer the Summons and Verified Complaint (*see* NYSCEF Doc. No. 24). In a Decision and Order dated August 14, 2024, Justice Sweeting granted default judgment against NYCHA (*see* NYSCEF Doc. No. 25). On October 16, 2024, the court executed and filed a So-Ordered Stipulation in which plaintiff agreed to vacate the default judgment against NYCHA and to accept an answer on behalf of NYCHA, which was to be served and filed within 30 days after the So-Ordering of the Stipulation on October 16, 2024 (*see* NYSCEF Doc. No.

26). On November 14, 2024, NYCHA filed a Verified Answer (*see* NYSCEF Doc. No. 27). In its Verified Answer, NYCHA asserted that the court lacked personal jurisdiction due to improper service of process as an Affirmative Defense.

In support of the instant motion, NYCHA argues that plaintiff's Complaint should be dismissed as to it for lack of personal jurisdiction because NYCHA was never served with process. NYCHA argues that the motion is timely as plaintiff was served with the motion 60 days after NYCHA served its Answer. In addition, NYCHA points out that plaintiff's Affidavit of Service states that the process server served a "Jane Doe (refused name)" with the Summons and Verified Complaint at 19 Church Street, New York, New York 10013, on February 7, 2024, at 3:32 p.m., after an unsuccessful earlier attempt at 10:18 a.m., at 250 Broadway, New York, New York 10007 (*see* NYSCEF Doc. No. 23). NYCHA also points to the Affidavit of Charlottle Stokes, a NYCHA Clerical Associate III, wherein she avers NYCHA was never served with process (*see* NYSCEF Doc. No. 28). As such, NYCHA argues that it does not have an office at 19 Church Street, where plaintiff purportedly served the papers (*id.*), but rather NYCHA's office for service of process is located at 90 Church Street, 11th Floor, New York, New York 10007 (*see id.*; NYSCEF Doc. No. 46). Ms. Stokes asserted that she checked the logbook for the 11th floor at 90 Church Street and confirmed that NYCHA was never served with the Summons and Verified Complaint in this action (*see* NYSCEF Doc. No. 28). Accordingly, NYCHA argues the court should dismiss the complaint against NYCHA for lack of personal jurisdiction, because NYCHA's sworn, nonconclusory statements refuting the Affidavit of Service with specific facts have established, as a matter of law, that it was not served with process.

In opposition, plaintiff asserts NYCHA failed to demonstrate that it was not properly served because NYCHA was served with plaintiff's Notice of Claims at their 250 Broadway,

New York, New York 1007 address, as shown by NYCHA’s acknowledgement of receipt of same (*see* NYSCEF Doc. Nos. 36-39), the USPS delivery tracking confirmation notices (*see* NYSCEF Doc. No. 40), and NYCHA conducting plaintiff’s 50(h) statutory hearing (*see* NYSCEF Doc. No. 43). Plaintiff also argues that NYCHA received plaintiff’s Summons and Verified Complaint as they interposed an Answer. Plaintiff argues that the Affidavit of Service shows that plaintiff’s process server was not given any indication that the service of process was incorrect, as service of process was received by a “Jane Doe” at the 19 Church Street address without incident and without it being rejected by recipient for being the wrong address or wrong entity (*see* NYSCEF Doc. No. 23). In turn, plaintiff asks for leave to serve NYCHA at its correct address pursuant to CPLR 306(b) if the Court finds that service of the Summons and Verified Complaint to be ineffective.

In reply, NYCHA argues that plaintiff failed to serve NYCHA at the proper address of 90 Church Street, 11th Floor, New York, New York 1007, which is the proper address for in person service of legal papers (*see* NYSCEF Doc. No. 46). NYCHA also argues that the USPS Tracking printouts for the Notices of Claim submitted by plaintiff show that 250 Broadway, where the Notices were purportedly mailed, was not the proper place for service as the USPS Tracking printouts show that delivery of the Notices of Claim were made to 90 Church Street, New York, New York, 10007, not 250 Broadway, New York, New York 10007 (*see* NYSCEF Doc. No. 40). In response to plaintiff’s argument that service occurred at 250 Broadway, NYCHA argues that is incorrect as the Affidavit of Service was attempted at that address but was “unsuccessful” (*see* NYSCEF Doc. No. 23). Similarly, NYCHA argues that as no employee or agent was authorized to accept service at either 250 Broadway or 19 Church Street at the time of the purported service,

the service upon “Jane Doe” at 19 Church Street was invalid (*see* NYSCEF Docs. Nos. 23 and 48).

Furthermore, NYCHA contends the Affidavit of Brian Hamid, the process server, fails to set forth sufficient facts showing that service was made in an authorized manner pursuant to CPLR 311 (a)(1), because it provides no information as to Jane Doe’s position or authority to accept service (*see* NYSCEF Docs. Nos. 23 and 48). Moreover, NYCHA argues that improper service of the Summons and Complaint is a jurisdictional defect that cannot be corrected or ignored pursuant to CPLR 2001. NYCHA states Plaintiff’s argument that NYCHA received the Notices of Claim is unavailing, because receipt of the Notices of Claim is not the same as receipt of the Summons and Complaint. NYCHA claims that the first instance it obtained notice of the action was via an email from plaintiff’s counsel, after the filing of the Summons and Complaint (*see* NYSCEF Doc. No. 48). As such, NYCHA argues this notice does not establish jurisdiction or proper service of the Summons and Complaint upon NYCHA.

NYCHA also asserts the Court should deny plaintiff’s request pursuant to CPLR 306(b) for an extension of time to serve NYCHA since a request for an extension should be made motion or a cross-motion and plaintiff has made neither. NYCHA argues that even if the Court were to consider it, however, CPLR 306(b) is inapplicable. NYCHA attests that the statute is only applicable in the event the plaintiff admittedly failed to timely serve the defendant within 120 days of commencing the action, and here, plaintiff claims otherwise. In turn, NYCHA argues even if the court determines that CPLR 306-b is applicable, the court should still deny the motion because plaintiff “does not purport to have demonstrated good cause for the delay” in seeking an extension or “in the interests of justice” as plaintiff’s request for an extension of time to serve NYCHA “was made after this instant motion to dismiss was made. Moreover, NYCHA attests

plaintiff has not shown any attempts to serve NYCHA at the correct address of 90 Church Street, even though that address is listed on NYCHA's website as the address for service of legal papers, and even though plaintiff has known of NYCHA's service objection since service of its Answer in November 2024. Therefore, NYCHA asserts plaintiff has not shown "reasonable diligence" in attempting to serve NYCHA properly.

ANALYSIS

An action may be dismissed for lack of personal jurisdiction (*see* CPLR 3211 [a][8]). The party must make such a motion within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship" (*see* CPLR 3211 [e]). Accordingly, NYCHA's motion is timely as it was made within 60 days of serving its Answer.

However, CPLR 306 (b) provides: "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." "Generally, a formal notice of motion or cross-motion should be used to request such relief; however, courts 'retain discretion to entertain requests for affirmative relief that do not meet the requirements of CPLR 2215" (*Nelson v. New York State Dept. of Motor Vehicles*, 188 AD3d 692, 694 [2d Dept 2020]).

"To meet the 'interest of justice' standard, the Court must make 'a careful judicial analysis of the factual setting of the case and a balancing of the competing interests,' including the 'expiration of the statute of limitations, the meritorious nature of the cause of action, the length of the delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant'" (*Woods v. M.B.D. Community Housing Corp.*, 90 AD3d 430, 431 [1st Dept 2011], *citing Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106 [2001]).

“Unlike an extension request premised on good cause, a plaintiff [who is invoking the interest of justice standard] need not establish reasonably diligent efforts at service as a threshold matter”

(*Lippett v. Education Alliance*, 14 AD3d 430, 431 [1st Dept 2005]).

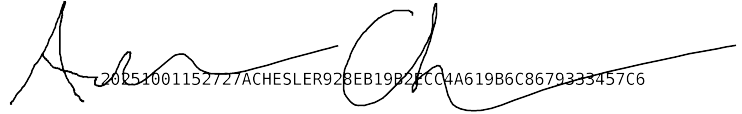
Here plaintiff attempted to timely serve NYCHA, but mistakenly attempted service at the wrong address. In addition, plaintiff’s attempt to re-serve defendant only upon opposition to NYCHA’s motion to dismiss does not preclude an extension of time, especially considering NYCHA has not demonstrated that it would suffer any prejudice as a result of the extension of time to serve (“*Lippett*, 14 AD3d at 431 [“Plaintiff’s failure to attempt to re-serve defendant upon receiving its answer alerting counsel to the problem with service should not preclude an extension in the interest of justice, particularly where defendant received actual notice of the action and shows no prejudice from the delay, and the statute of limitations expired in the interim”]). NYCHA had notice of the instant lawsuit well before the statute of limitations expired through plaintiff’s email after the Summons and Complaint were filed, the four Notices of Claims, and through NYCHA’s participation in plaintiff’s 50-h hearing. As such, the Court finds plaintiff showed that an extension of time to serve NYCHA is warranted in the interest of justice (*id.*).

Accordingly, it is hereby

ORDERED, that NYCHA’s motion to dismiss the Complaint pursuant to CPLR 3211 is denied; and it is further

ORDERED, that plaintiff is to effectuate service upon NYCHA at the proper address of 90 Church Street, 11th floor, New York, NY 1007, within twenty (20) days of the date of entry of this Order.

This constitutes the Decision and Order of the Court.



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10/01/2025

DATE

ARIEL D. CHESLER, 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