

**Bishop v WSC Investigation & Sec., Inc.**

2025 NY Slip Op 33753(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 100720/2023

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY
HON. LESLIE A. STROTH

PRESENT: J.S.C. PART 12M
Justice

SAMAAD BISHOP,
Plaintiff,

- v -

WSC INVESTIGATION & SECURITY, INC., BUSTER E.
CAGGIANO, JEVON DOE, PETWIL IX, INC., PKF
MANAGEMENT, INC., THE FONSECA GROUP,
INC., PETER J. FONSECA, PETER S. FONSECA, DEBBIE
BRESSMAN, JONATHAN CASTRO, JOHN DOES,
Defendant.

INDEX NO. 100720/2023
MOTION DATE N/A, N/A, 09/19/2025, 10/18/2025
MOTION SEQ. NO. 004 005 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 108, 109, 138, 139, 140, 141, 142

were read on this motion to/for ENFORCE/EXEC JUDGMENT OR ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 005) 102, 103, 106, 107, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137

were read on this motion to/for ENFORCEMENT

The following e-filed documents, listed by NYSCEF document number (Motion 006) 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

were read on this motion to/for AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 007) 160, 161, 162, 163, 164

were read on this motion to/for LEAVE TO FILE

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Samaad Bishop (“Plaintiff”), proceeding *in propria persona*, commenced this civil action seeking compensatory and punitive damages, declaratory relief, and permanent injunctive relief arising from an alleged assault that occurred on August 5, 2022, at McDonald’s Restaurant No. 3835, located at 809/811 Sixth Avenue, New York, New York

Plaintiff alleges that while lawfully present at the premises, he was assaulted by an unidentified individual referred to in the pleadings as “John Doe” or “Jevon Doe Security Guard,” who was, at relevant times, employed by or acting as an independent contractor for Defendant WSC Investigation & Security, Inc. (“WSC”). Plaintiff asserts that this individual displayed a shield resembling a New York State officer’s badge bearing the words “Public and Private Officer” and number 2148, and that on multiple occasions he threatened Plaintiff with physical injury

The corporate defendants named in this action include WSC Investigation & Security, Inc., Petwil IX, Inc., PKF Management, Inc., doing business as McDonald’s Restaurant No. 3835, and The Fonseca Group, Inc. Plaintiff alleges that these entities owned, leased, operated, managed, maintained, and controlled the premises where the incident occurred. Plaintiff further alleges that through contractual arrangements and special relationships, these defendants exercised control over the hiring, supervision, and conduct of security personnel at the location

Individual defendants named include Buster E. Caggiano, alleged to be the owner, operator, and president of WSC; Peter J. Fonseca and Peter S. Fonseca, alleged owners, operators, and franchisees of Petwilix, Inc.; Debbie Bressman, alleged president of PKF Management, Inc.; and Jonathan Castro, alleged general manager of McDonald’s Restaurant No.

3835. Plaintiff pleads that each exercised supervisory authority and bore responsibility for security operations at the subject premises

According to Plaintiff, the assault committed by the “Jevon Doe Security Guard” was carried out within the scope of employment and agency relationships with WSC and the other defendants, rendering them vicariously liable. Plaintiff further pleads causes of action for negligence, negligent hiring, training, supervision, and retention, as well as gross negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress.

Plaintiff asserts that as a result of the incident, he sustained permanent injuries, for which he seeks both compensatory and punitive damages. The Complaint additionally seeks to pierce the corporate veil of WSC and hold Caggiano personally liable for alleged abuse of the corporate form

In Motion Sequence 004. Plaintiff moves to (1) strike Defendant Petwil IX, Inc.’s Answer as unverified and untimely and (2) for default Judgment against Defendants WSC Investigation Inc. Buster E. Caggiano and Petwil IX, Inc. Plaintiff also moves to extend the time to serve the Amended Complaint upon Defendants Jevon “Doe” Security Guard, Jonathan Castro and all other Defendants who Plaintiff claims were duly served on October 14, 2024 (or any other date) if such Defendants intend to raise a defense based on lack of personal jurisdiction or improper service.

In Motion Sequence 005, Plaintiff moves to (1) enforce a settlement agreement entered between Plaintiff and Defendants Petwil IX, Inc., PKF Management, Inc., The Fonseca Group, Inc., Peter J. Fonseca, Peter S. Fonseca, Debbie Bressman and Jonathan Castro (2) seal confidential information within the settlement agreement and (3) issue a temporary restraining order barring defendants from filing a stipulation of discontinuance.

In Motion Sequence 006, Plaintiff moves to amend the caption of the First Amended Complaint to include W.S.C. of NY Inc. and Buster Caggiano as Defendants to the instant action.

In Motion Sequence 007, Plaintiff moves for leave to file a Reply Memorandum of Law *nunc pro tunc* in support of Motion Sequence 006 which as discussed *supra* relates to amending the caption of the First Amended Complaint.

**PLAINTIFF'S MOTION FOR DEFAULT AND EXTENSION OF TIME TO SERVE  
(MOTION SEQUENCE 004)**

First, the Court notes that Plaintiff subsequently agreed to settle his dispute as against Petwil IX, Inc. As such, the branch of Motion Sequence 004 seeking striking of Defendant Petwil IX Inc.'s answer and for default has been rendered moot by such agreed settlement, discussed *infra* in Motion Sequence 005.

Second, Plaintiff provided multiple signed ex-parte orders extending the time to serve the Supplemental Summons and First Amended Verified Complaint, with the final one extending the time to serve until November 29, 2024. (NYSCEF Doc No. 92). Plaintiff now seeks an additional extension of the time to serve such Defendants Jevon "Doe" Security Guard, Jonathan Castro and all other Defendants who Plaintiff claims were duly served on October 14, 2024 (or any other date) if such Defendants intend to raise a defense based on lack of personal jurisdiction or improper service.

CPLR 306-b sets forth the service requirements and timing thereof, and specifically provides that "[i]f 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."

Courts have interpreted the "good cause shown" and "interest of justice" standards in CPLR 306-b as "two separate standards by which to measure an application for an extension of time to serve" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104 [2001]). Good cause requires a showing that "diligent efforts at service" have been made by the party seeking an extension. (Id. at 105). Courts "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." (Id. at 105-106).

Courts routinely grant extensions for service in cases where "defendants have not demonstrated any prejudice." (*Hernandez v Abdul-Salaam*, 93 AD3d 522 [1st Dept 2012]).

Here, Plaintiff has requested numerous extensions in time to serve. As to Defendants Jevon "Doe" Security Guard and Jonathan Castro, the court grants the extension in time to serve by 90-days from the date of this order as such Defendants would still be permitted to file responsive pleadings, the delay is minimal and as such any prejudice to those Defendants is minimal. The Court declines to grant the branch of Plaintiff's motion seeking that all Defendants waive any defenses related to service or to personal jurisdiction, as such would be highly prejudicial as it would foreclose potentially meritorious Defenses available.

Turning next to Plaintiff's motion for Default as against WSC Investigation Inc. and Buster E. Caggiano, the Court does not find that Plaintiff has established, as a matter of law, a right of entitlement to entry of default.

When a defendant fails to appear or answer, a plaintiff may seek a default judgment against that defendant (CPLR 3215 [a]). "On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and

complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing" (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

Here, Plaintiff fails to attach an affidavit of merit or complaint verified by the Plaintiffs seeking default. A complaint verified by an attorney rather than the plaintiff is "insufficient to support entry of judgment pursuant to CPLR 3215" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "In the absence of either a verified complaint or an affidavit by the party, the entry of judgment by default is erroneous" *Mullins v DiLorenzo*, 199 AD2d 218, 220 [1st Dept 1993]. As such, Plaintiffs have failed to supply any documentation of proof of facts constituting their claim, and as such, Plaintiffs application for default judgement is denied.

Moreover, there is a strong policy preference for court's to resolve issues on their merits. (*Giordano v Giordano*, 216 AD3d 425, 426 [1st Dept 2023]). Defendants WSC Investigation Inc. and Buster E. Caggiano provide a proposed verified Answer demonstrating potentially meritorious defenses. (NYSCEF Doc No. 24). Moreover, given that Plaintiff has been afforded numerous extensions in time to serve, the fact that Defendants WSC Investigation Inc. and Buster Caggiano's delay is minimal at less than six months, and the policy preference for deciding cases on their merits, Plaintiff's motion for default is denied and Defendants' Answer is accepted *nunc pro tunc*.

As to any further arguments raised by the parties either in opposition or reply, such were not properly made and are not considered.

**PLAINTIFF'S MOTION TO ENFORCE A SETTLEMENT AGREEMENT (MOTION  
SEQUENCE 005)**

Plaintiff, in Motion Sequence 005, moves to enforce a settlement agreement entered between Plaintiff and Defendants Petwil IX, Inc., PKF Management, Inc., The Fonseca Group, Inc., Peter J. Fonseca, Peter S. Fonseca, Debbie Bressman, and Jonathan Castro (“Settling Defendants”).

Plaintiff and Settling Defendants entered a Settlement Agreement with Release on January 23, 2025. (NYSCEF Doc No. 111). The agreement set forth a payment by Settling Defendants to Plaintiff, and that Settling Defendants would furnish to Plaintiff surveillance footage, in an unedited format, of the McDonald’s store where the alleged incident occurred on the date the alleged incident occurred, and any contracts between Settling Defendants and co-Defendants WSC Investigation & Security, Inc. Buster E. Caggiano and “Jevon Doe, Security Guard” . (Id. § 2.0). In return, Plaintiff agreed to release Defendants from any liability in the pending action upon issuance of the settlement check within 30 days of receipt of the signed Settlement Agreement. (Id. § 2.1).

Subsequently, on January 30, 2025, Plaintiff sent an email to counsel for Settling Defendant’s stating “Understood. But when will you deliver the security footage to me?” (NYSCEF Doc No. 125). Counsel responded via email stating “My link for the video expired so I had to request another copy. I’ll forward it to you upon receipt.” (NYSCEF Doc No. 126).

On February 12, 2025, Plaintiff wrote to counsel for Settling Defendants again by asking the following: “Would please give me an update and provide a date when you will send me the video surveillance footage of the subject events of August 5, 2022?” (NYSCEF Doc No. 127). Counsel for Settling Defendants responded on February 13, 2025 stating the following:

“Bad news, the video had been retrieved but the link expired and nobody knew it had to be downloaded. It no longer exists. Sorry. I realize that providing the video was a condition of the settlement. Let me know how you want to proceed. We can still send you the settlement check this week if you want. As I’m sure you know, the video never contains audio so I’m not sure how helpful it could be anyway.” (NYSCEF Doc No. 127).

Plaintiff then responded stating “The only way that I want settle this case and not seek dismissal of your client's Answer for spoliation is that I pick up my check from your office tomorrow by the close of business (2/14/2025).” Both Plaintiff and Settling Defendants agree that Plaintiff took and accepted the settlement check on February 19, 2025. On February 25, 2025, Settling Defendants filed a signed stipulation of Discontinuance, which was signed on January 24, 2025, pursuant to the settlement agreement. (NYSCEF Doc No. 105).

First, the Court notes that the Settlement agreement unequivocally provided that the Settling Defendants were to provide video surveillance footage on the date of the accident, and that such was a material condition of Plaintiff’s release of any claims. The court does not find that Settling Defendants subsequent communications that such were deleted sufficient to overcome the terms negotiated in the Settlement Agreement. Counsel for the settling Defendants noted that they knew “that providing the video was a condition of the settlement.” (NYSCEF Doc No. 127). At Oral Argument on June 16, 2025, Plaintiff further stated that he was not attempting to unravel the settlement, but rather that he wanted to have the video and any contracts released. Issues arise, however, in the fact that Plaintiff agreed to take the money after he was informed of the anticipated breach, and asserts that he is under no obligation to return the settlement money given the breach by Settling Defendants.

Neither Plaintiff nor Settling Defendants may unilaterally breach the conditions of settlement. In order to effectuate the terms of the agreement, the Court directs Defendant to produce the video and any agreements as agreed within the Stipulation of Settlement within 90

days of the date of this order. Plaintiff, in return, is directed to return the settlement funds given to him to Settling Defendants. Upon compliance with the Settlement Agreement, Settling Defendants are to comply with the payment terms set forth in the Settlement Agreement. If the parties are unable to comply, the Settlement Agreement shall be voided.

As to the branch of Plaintiff's motion seeking a temporary restraining order barring defendants from filing a stipulation of discontinuance, the court notes that no Order to Show cause seeking such relief was ever filed despite Plaintiff's argument stating one would be filed. Moreover, as the Court is directing further time to resolve the issues, it declines to grant such a restraining order at this time, as such would be a nullity.

**PLAINTIFF'S MOTION TO ENFORCE A SETTLEMENT AGREEMENT (MOTION  
SEQUENCES 006 + 007)**

Pursuant to CPLR 3025(b), "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just." "In general, motions for leave to amend a pleading should be granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise" (*Corwise v. Lefrak Org.*, 93 A.D.3d 754 [2<sup>nd</sup> Dept 2012]). "Prejudice requires that the [opposing party] has been hindered in the preparation of his case or been prevented from taking some measure in support of his position.'" (*RCLA, Inc. v. 50-09 Realty, LLC*, 48 A.D.3d 538, 539, 852 N.Y.S.2d 211 [2d Dept 2008] [*quoting Loomis v. Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 23, 444 N.Y.S.2d 571, 429 N.E.2d 90 (1981)]).

In *MBIA Ins.*, the Court held that "on a motion for leave to amend, [a party] need not establish the merit of its proposed new allegations, but simply show that the proffered

amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499 [1<sup>st</sup> Dept 2010]; see also *Cruz v. Brown*, 129 A.D.3d 455 [1<sup>st</sup> Dept 2015]).

Plaintiff seeks to amend the pleading to change the name of Defendant WSC Investigation & Security, Inc. to W.S.C. of NY, Inc. and similarly to change the name of Buster E. Caggiano to Buster Caggiano. There is no showing that either Defendant would be prejudiced, as both have already retained counsel, provided pleadings and filed to this action. Moreover, the amendment is not “devoid of merit” as it merely reflects Plaintiff’s understanding of the proper names of previously included Defendants. Defendants have not identified any prejudice to the amendment, as there can be no claim that they have not been afforded a chance to respond in the past.

As to Plaintiff’s motion to late file an additional reply brief in Motion Sequence 007, the court denies such as it is moot in light of the granting of Plaintiff’s motion to amend the caption. As such, the additional sur-reply is unneeded, and the court denies such.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that Motion Sequence 004 is granted in part, in that the branch of the motion by Plaintiff requesting to extend the time to serve Defendants Jevon “Doe” Security Guard and Jonathan Castro is extended by 90-days from the date of this order; and it is further

ORDERED that Motion Sequence 004 is otherwise denied; and it is further

ORDERED that Defendants WSC Investigation Inc. and Buster Caggiano’s Proposed Verified Answer is accepted and deemed timely served upon all parties; and it is further

ORDERED that Motion 005 to enforce the settlement agreement is granted in part, and Defendants shall produce the video and any agreements as agreed within the Stipulation of Settlement within 90 days of the date of this order. Plaintiff, in return, shall return the settlement funds given to him to Settling Defendants within 7 days of the date of this order; and it is further

ORDERED that Motion 006 to amend the caption to include Defendants Buster Caggiano W.S.C. of NY, Inc and Buster Caggiano is granted, and it is further

ORDERED that the caption shall be maintained as follows:

-----X  
SAMAAD BISHOP  
Plaintiff, Index No.: 100720/2023  
-against-

W.S.C. OF NY, INC., W.S.C. OF NYC, INC., WSC I  
NVESTIGATION & SECURITY, INC., BUSTER E.  
CAGGIANO, In His Individual and Official Capacity as President of  
WSC INVESTIGATION & SECURITY, INC., BUSTER CAGGIANO,  
In His Individual and Official Capacity as President of WSC  
INVESTIGATION & SECURITY, INC., BUSTER E. CAGGIANO,  
In His Individual and Official Capacity as President of W.S.C. OF  
NYC, INC., BUSTER CAGGIANO, In His Individual and Official  
Capacity as President of W.S.C. OF NYC, INC., BUSTER E.  
CAGGIANO, In His Individual and Official Capacity as President  
OF W.S.C OF NY INC.. BUSTER CAGGIANO, In His Individual  
and Official Capacity as President OF W.S.C OF NY INC.,  
"JEVON DOE Security Guard" PETWIL IX, INC.,  
PKF MANAGEMENT, INC., DOING BUSINESS AS  
MCDONALD'S (STORE NO. 3835) THE FONSECA GROUP, INC.,  
PETER J. FONSECA, Sued In His Individual and Official  
Capacity as OWNER/ OPERATOR and FRANCHISEE of PETWIL IX,  
INC, PETER S. FONSECA, sued In His Individual and Official  
Capacities as OWNER/OPERATOR and FRANCHISEE of PETWIL  
IX, INC., DEBBIE BRESSMAN in her Individual and Official  
Capacity as PRESIDENT, of PKF MANAGEMENT, INC.,  
and PETWIL IX, INC., JONATHAN CASTRO,  
in His Individual and Official Capacities as GENERAL MANAGER  
of PKF MANAGEMENT, INC., DOING BUSINESS as  
MCDONALD'S (STORE NO. 3835),  
PETWIL IX, INC., and "JOHN "DOES" 1 through 10  
Defendants.

ORDERED that Motion Sequence 007 for leave to file a sur-reply related to motion Sequence 006 is denied as moot.

The foregoing constitutes the decision and order of the court.

10/3/2025  
DATE

  
HON. LESLIE A. STROTH  
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE