

Zenith Capital Corp. v AE Quality Trades Inc.

2025 NY Slip Op 34707(U)

November 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 506565/2024

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP1 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 26th day of November, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

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ZENITH CAPITAL CORP.,

Plaintiff(s),

-against-

AE QUALITY TRADES INC., ANDREA ESTEVEZ, RE MIXED CONSTRUCTION, INC. AND CHARY RUIZ ESTEVEZ,

Defendant(s).

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ORDER

Motion Calendar: 04/23/2025

Index #: 506565/2024

Mot. Seq. #(s): 4

Mot. Calendar #: 5

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Cross-Motion/Petition/
 Order to Show Cause, Affidavits/Affirmations, and Exhibits _____
 Opposing Affidavits/Affirmations and Exhibits _____
 Reply Affidavits/Affirmations and Exhibits _____

99-101
 102-109
 111

Plaintiff Zenith Capital Corp. ("Plaintiff") commenced this commercial action by Summons and Complaint filed March 6, 2024, seeking to recover \$1.4 million dollars in damages from Defendants: AE Quality Trades, Inc. ("AE"), Andrea Estevez ("Andrea"), Re Mixed Construction, Inc. ("RMC"), and Chary Ruiz Estevez ("Chary") alleging bank fraud and conspiracy, inter alia.

Plaintiff's Complaint is one grounded in 21st Century technology where Hackers or Scammers intercept emails, steal bank account information and illegally access bank accounts to electronically pilfer funds from unwitting account holders and redirect bank funds to Hackers/Scammers' designated participatory recipients.

In this instant motion Plaintiff moves, inter alia, for an extension of time to serve the Summons and Complaint via alternate service upon Defendants Re Mixed Construction Inc. and Chary Ruiz Estevez, a registered agent of same (collectively the "New Jersey Defendants"), pursuant to CPLR 306-b. The New Jersey Defendants opposed this motion.

Herein, Plaintiff has demonstrated “good cause” and established several relevant factors weighing heavily in its favor “in the interest of justice” to extend its time to serve the Summons and Complaint pursuant to CPLR 306-b.

PROCEDURAL HISTORY

The procedural history is included with portions of the Complaint verbatim to gain an understanding of the alleged unauthorized transfers of Plaintiffs’ monies stolen from Plaintiffs’ bank account by Defendants AE Quality Trades, Inc. ("AE") and Andrea Estevez ("Andrea") and then the stolen funds deposited into Defendants Re Mixed Construction, Inc. ("RMC"), and Chary Ruiz Estevez ("Chary"), bank account and to businesses in China, amongst others.

SUMMONS & COMPLAINT

Plaintiff alleges ‘Andrea Estevez ("Andrea"), the principal and resident agent of AE, opened AE’s bank account at Citibank, N.A., shortly before Defendant(s) sent the hoaxed emails to Plaintiff’s email account. Once the stolen funds were received into AE’s bank account, Defendant Andrea proceeded to disburse the funds to various entities and herself, including but not limited to, entities in China, and Re Mixed Construction, Inc. ("RMC"), a New Jersey company associated with Chary Ruiz Estevez ("Chary") a New Jersey resident, purchasing various items, making large cash withdrawals and purchasing plane tickets until the total \$1.4 million dollars was dispersed.

Summons & Complaint Theft of Funds Bank Transactions Alleged: NYSCEF # 2

- According to Citibank, N.A.'s account opening documentation, the AE Account was opened at the #0834 branch of Citibank, N.A. in New York City on October 17, 2022. The account opening documentation for the AE Account is attached hereto as **Exhibit A**.
- The AE Account was opened on behalf of AE by Andrea, and Andrea is listed as the only signer for the AE Account.
- On or about October 24, 2022, Donald J. McCaffrey ("McCaffrey"), President and CEO of Resverlogix Corp., an affiliate of Zenith, emailed a subscription agreement for an investment in Zenith, and wiring instructions to Randall Reed, a partner of the RRPC Limited Partnership, for \$1 million. This email and correct wiring instruction are attached as **Exhibit B**.
- During the period from October 25th through October 26, 2022, an extensive email exchange occurred between McCaffrey and Sandra L. Vaughn ("Vaughn"), the executive vice-president of the Reed Family Enterprises, to include additional subscription agreements for Steven A. Reed QSST Trust, Shelby N. Reed QSST Trust, Charles A. Reed QSST Trust, and Vaughn, in the amount of \$100,000 each.

- During this email exchange, on October 26, 2022, at least one of the defendants or entities associated with them, intercepted an email, substituted false wiring instructions for the AE Account and transmitted the email containing the signature lines of McCaffrey and the false wire instructions for the AE Account to Vaughn. This October 26th email and fraudulent wire transfer instructions are attached as **Exhibit C**.
- On October 27, 2022, Vaughn requested Bank of America, N.A. ("BoA") to make five wire transfers for the amounts reflected in each of the five subscription agreements, sending a total of \$1,400,000 to the account identified in the fraudulent wire instructions. A true and correct copy of the request to wire \$1,000,000 from the account of the RRPC Limited Partnership is attached as **Exhibit D**. The email with the Federal Wire Numbers for the remaining four wire transfers is attached as **Exhibit E**.
- Each of the wire transfers listed above were received into the AE Account on October 27, 2022. A true and correct copy of the receipt of the wire transfers into the AE Account is attached hereto as **Exhibit F**.
- Once AE received the funds in the AE Account, AE, through Andrea, began to secrete the funds. Numerous counter and ATM withdrawals of the Zenith Funds were made by Andrea and/or others, including the following:
 - a) \$30,000 on October 27, 2022;
 - b) \$12,000 on October 28, 2022;
 - c) \$900 on October 28, 2022;
 - d) \$700 on October 31, 2022;
 - e) \$2,000 on November 1, 2022;
 - f) \$1,000 on November 2, 2022;
 - g) \$650 on November 3, 2022;
 - h) \$11,000 on November 7, 2022, and;
 - i) \$2,378.25 on December 13, 2022.
- Numerous wire transfers of the Zenith Funds were made to RMC, including the following:
 - a) \$80,000.00 on October 27, 2022;
 - b) \$28,000.00 on October 28, 2022;
 - c) \$9,000.00 on October 31, 2022;
 - d) \$5,000.00 on November 1, 2022, and;
 - e) \$13,000.00 on November 2, 2022.
- Numerous wire transfers of the Zenith Funds were made to entities in China (collectively, the "China Entities").
 - a) \$248,500 to HUZHOU CHUANGDA WPORT EXPORT CO. Ltd., a Chinese company on October 27, 2022;
 - b) \$287,000 to SHOUGUANG RONGFU INDUSTRY CO. LTD., on October 28, 2022;
 - c) \$297,500 to SHOUGUANG RONGFU INDUSTRY CO. LTD on October 31, 2022;
 - d) \$183,300 to SHOUGUANG RONGFU INDUSTRY CO. LTD on November 1, 2022,

- e) \$175,000 to MORAL WIN INTERNATIONAL LIMITED, on November 2, 2022.
- Numerous debit card purchases were made.

By Order entered August 6, 2024, the Court (Hon. Leon Ruchelsman, J.), denied Defendant's motion to Dismiss (**Motion Sequence #1**) the Complaint noting there were questions of fact as to whether service of process was properly effectuated, and denied Plaintiff's motion to Compel discovery (**Motion Sequence #2**). Resultingly, the Court directed the parties to appear at a Traverse Hearing on March 17, 2025, to determine whether the Summons and Complaint was properly served, (NYSCEF Doc. #66).

By Order entered November 7, 2024, the Court (Hon. Leon Ruchelsman, J.), granted Plaintiff's discover motion and Ordered Defendants AE Quality Trades, Inc. ("AE"), Andrea Estevez ("Andrea") "within fourteen (14) days from entry of this order, the New York Defendants are directed to E-file a sworn affidavit containing detailed information about their professed inability to obtain the discovery requested in Plaintiff's E-filed as EF#85. In particular, the New York Defendants are directed to elaborate on the claims that the WhatsApp account of Andrea Estevez was linked to a phone that was damaged ("the Phone"), and which is no longer available to her, and that she cannot obtain responsive bank documents because her bank account (referenced in her response to Interrogatory No. 3 EF#84) is "locked." See, NYSCEF Doc. #87 (Order), #88 (Notice of Entry).

INSTANT MOTION

On March 13, 2025, Plaintiff canceled the Traverse Hearing that the Court scheduled for March 17, 2025, after recognizing deficiencies in its affidavit of service. Thereafter on March 14, 2025, Plaintiff on March 14, 2025, motioned the Court to extend its time to serve the Summons and Complaint upon the New Jersey Defendants arguing "good cause" shown and in the "interest of justice", pursuant to CPLR 306-b.

Plaintiff never had any contact or business with the New Jersey Defendants and did not know their business or residential address, so Plaintiff engaged its counsel, Thomas Vandenabeele, to locate the New Jersey Defendants. In support of this motion, Plaintiff's attorney submitted an affirmation that after a diligent search they determined the New Jersey Defendant's addresses included in the affidavit of services, 902 Union Avenue, Pennasuken, NJ 08104. See, NYSCEF Doc. #92. On March 7, 2024, one day after the filing of the Summons and Complaint, Plaintiff served the New Jersey Defendant Chary at that address pursuant to CPLR 308(1) and RMC via New York State's secretary of state, BCL 306. See, NYSCEF Doc. #10 &11.

Defendant Chary in her affirmation of opposition argued she was not personally served, CPLR 308(1) because, "I have lived in the Dominican Republic continuously since 2023.1 have not been in the United States or New York at any time in 2024." See, NYSCEF Doc. #17. Oddly, Chary acknowledged receipt of the Summons and Complaint via her email sent to Plaintiff's attorney within three hours on the same day of service of the Summons and Complaint see,

NYSCEF #93 and then again on March 8, 2024, and both times she denied participating in any fraud. See, NYSCEF #94.

It is well settled that [s]ervice of a summons and complaint generally must be made within 120 days after the commencement of the action and a court may, in the exercise of its discretion, grant an extension of time to serve pleadings for “good cause shown” or in the “interest of justice” (see *Hall v L&A Operational*, 228 AD3d 846 [2d Dept 2024] citing, inter alia, *Bhatara v Kolaj*, 222 AD3d 926, 930, 203 N.Y.S.3d 345 [2023] [internal quotation marks omitted]; see *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-105, 761 N.E.2d 1018, 736 N.Y.S.2d 291 [2001]); CPLR 306 [b]). If a movant fails to establish good cause for an extension, then courts must use its judicial discretion to determine whether a movants’ 306—b motion satisfies the broader “interest of justice” standard (see *State of New York Mtge. Agency v Braun*, 182 A.D.3d 63 [2d Dept 2020]; (*Matter of Certified Collision Experts, Inc. v. New York State Dept. of Motor Vehs.*, 232 A.D.3d 783 [2d Dept 2024])).

Herein, Defendants are accused of a premeditated scheme of spoofing Plaintiff’s emails, stealing their bank account information and then electronically pilfering \$1.4 million dollars from Plaintiff’s bank account. Defendants AE and Andrea (as the principal and resident agent of AE) are accused of having Plaintiff’s funds fraudulently deposited into their bank account and thereafter disbursing the funds to out of state Defendants Re Mixed Construction, Inc. (“RMC”) Chary Ruiz Estevez’ (“Chary”), registered agent, as well as other recipients in China. The record further reflects that Defendant Chary is a principal owner of corporate Defendant Re Mixed Construction (NYSCEF Doc. #93). Defendant AE Quality in five separate transactions wired funds from its Citibank account to Defendant Re Mixed Construction in the Fall of 2022 (NYSCEF Doc. #8).

GOOD CAUSE

Defendant Chary’s submissions demonstrate that she received the Summons and Complaint on March 7, 2024 as evidenced by her immediate email to Plaintiff’s attorney after three hours after service from her email address, charyruiz101003@gmail.com, stating “My name is Chary Ruiz my company name is RE MIXED CONSTRUCTION INC. Today, I received a notification about a lawsuit filed by a company called Zenith where I am accused of fraud crimes...” Chary, also sent another email again on March 8, 2024, reiterating she did not participate in any wrongdoing. This Court finds Plaintiff took the extra step to engage its attorney to locate the New Jersey Defendants and Chary’s immediate emails in direct response to the allegations listed in the Summons and Complaint demonstrates Plaintiff’s reasonable diligence in its attempt to serve Chary and Defendant’s receipt of the Complaint. Plaintiff engaged its counsel, Thomas Vandabeele, to locate the New Jersey Defendants who affirmed the diligence he performed to locate the New Jersey Defendants, See, NYSCEF Doc. #92. Plaintiff’s affidavit of service states Chary was served at her residence or place of business via CPLR 308(1) but perhaps Plaintiff served it via CPLR 308(2) on a substitute person who informed Chary of the papers served

since Chary states she was in the Dominican Republic at the time of service. Chary does not explain to the court how she responded immediately, via email to Plaintiff's attorney, Thomas Vandenebeele, to the Complaint denying she committed fraud, NYSCEF #93 & 94. With respect to serving the New York State Secretary of State for service upon RMC a New Jersey corporation, it is conceivable that a person could mistakenly serve NYS's secretary of state in Lieu of New Jersey's secretary state especially considering both states make up the metropolitan "Tri-State" area and are neighboring states¹. Thus, Movants attempts to serve the New Jersey Defendants was sensibly calculated and exercised with reasonable diligence. *Bumpus v New York City Tr. Auth.*, (66 AD3d 26 [2d Dept 2009]).

INTEREST OF JUSTICE

In considering 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" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95 [2001]).

Foremost, this Court takes very seriously Defendants willful failure to comply with Court Orders and is mindful that restarting the action will prolong justice and afford Defendants an opportunity to remain illusory and continue to rid itself of relevant evidence. To date Defendants willful failure to respond to the Court's Order of its spoliation of critical evidence, its cell phone with relevant "whatsapp" communications, and its alleged inability to access its bank account where Plaintiff's \$1.4 million dollars were deposited and then redeposited into Defendants bank accounts and other entities located in China is alarming. The Court (J. Ruchelsman) recognized that the (AE and Andrea) responses to Plaintiff CPLR 3124 requests were critical to this case and "wholly insufficient" and granted Plaintiff's CPLR 3124 (**Motion Sequence #3**). Consequently, on November 7, 2024, the Court Ordered Defendants AE Quality Trades, Inc. ("AE"), Andrea Estevez ("Andrea") "within fourteen (14) days from entry of this Order to E-file a sworn affidavit containing detailed information about their professed inability to obtain the discovery requested in Plaintiff's E-filed as Ef#85. The Court specifically requested "the New York Defendants are directed to elaborate on the claims that the WhatsApp account of Andrea Estevez was linked to a phone that was damaged ("the Phone"), and which is no longer available to her, and that she cannot obtain responsive bank documents because her bank account (referenced in her response to Interrogatory No. 3 EF#84) is "locked." See, NYSCEF Doc. #87 (Order), #88 (Notice of Entry).

Plaintiff has stated a potentially meritorious cause of action with detailed claims. Seizing emails and pilfering bank funds are very serious allegations that impacts every person who uses email and transmits its banking information. Virtual bank account takeovers costs account holders undue harm and insurance companies' massive claims with the costs ultimately passed down to all

¹ [What is Considered the New York City Metropolitan Area?](#)

consumers via increased insurance premiums and taxpayers at large. It is important to adjudicate these types of claims sooner rather than later, if possible. A court's speedy and uninterrupted resolution of the case may serve as a deterrent to all involved in these schemes that these matters are deserving of immediate determination within each branch of government, especially the judiciary – the trier of facts. For the Plaintiff and Insurance companies' significant sums of monies are lost that are difficult to recover because of the virtual speed at which their monies are “redirected” stolen and the quick ghosting or disappearance of the bad actors who immediately dispose of the funds, close their bank accounts, disappear in the virtual world or out of the country and are hard to locate.

Defendants did not suffer any delays, nor did they proffer any arguments of any delays suffered. Plaintiff filed its CPLR 306-b and within four and 1/2 months of J. Ruchelsman Order sending the matter to traverse, entered November 7, 2024. In preparation for the Traverse Hearing scheduled for March 17, 2025, Plaintiff concerned about an “error” in service thought it may have been problematic to sustain service of the Summons and Complaint and on March 13, 2025, informed this Court and all counselors that Plaintiff would not proceed with the Traverse Hearing (See NYSCEF Doc. #96). The next day Plaintiff filed the instant motion, NYSCEF Doc. #91. Thus, Defendants' argument that Plaintiff should have filed its 306-b motion several months earlier than it did is futile. A plaintiff “who believes service was properly made has no incentive to move to extend the time to serve until after it has been found that service was, in fact, deficient” (see *State of New York Mtge. Agency v Braun*, 182 A.D.3d 63, 66-68 [2nd Dept 2020]).

Plaintiff timely filed the Summons and Complaint on March 6, 2024, and made the service attempts far in advance of the statutory deadline to serve Defendants. Plaintiff allege service of the Summons and Complaint on Defendants Re Mixed Construction, Inc. ("RMC"), and Chary Ruiz Estevez ("Chary") on or about March 7, 2024, in turn, Defendants immediately served their answer on March 25, 2024 and responded to the action via email 3 hours after it was served the Summons and Complaint.

Thus, Defendants have not suffered any prejudice in the filing of the action or the filing of this 306-b motion. Defendants had immediate notice of the action evidenced by timely filing of the answers, their continuous participatory motion practice since its filing. The Court notes Defendants have not alleged any prejudice suffered nor sought any counterclaims against Plaintiff for false allegations in these disturbing claims filed. Both Plaintiff and Defendants have moved this case forward expeditiously and continuously. Granting Plaintiff an extension of time to serve would not cause Defendants to suffer any prejudice.

On the other hand, Plaintiff will suffer a substantial prejudice by restarting the case. The main New Jersey Defendant Chary, who also controls the corporation maintains she is located in Dominican Republic with no foreseeable return to the United States. Defendants AE Quality Trades, Inc. ("AE"), Andrea Estevez ("Andrea") have blatantly refused to abide by this Court Order to provide an account of its lost “whatsapp” and access to its bank account. Plaintiff's funds were

inexplicably redirected to Defendants AE and Andrea's bank account and immediately disbursed to the New Jersey Defendants and internationally to other organizations in China. Interestingly, the Court also notes that Defendants Andrea and Chary share the same surname "Estevez" with no information provided of their possible familial relation. Given that the Court has already determined Defendants AE and Andrea, non-cooperative in their CPLR 3124 responses and noncompliant of the Courts' Order, Plaintiff would suffer substantial harm to recommence this case if Defendants are provided additional time to "lose", "misplace" more evidence or avoid service while in Dominican Republic with no address of record.

Plaintiff is correct in that the statute of limitations has not expired, and that dismissal of the instant action will cause Plaintiff to have to purchase a new index number and refile, unnecessarily burdening the judicial system (NYSCEF Doc. 104, para16).

Finally, this Court has invested a substantial amount of time, nearly three years, in adjudicating the matter and compelling the Plaintiff to recommence this action would be a waste of limited judicial resources. Over the last two years and eight months the parties have engaged in extensive and continuous litigation with three Judicial Orders on **Motion Sequences #s1, 2, and 3**, rendered by (J. Ruchelman) and a Traverse Hearing scheduled. Now **Motion Sequence # 4** was heavily considered and is determined by this Order.

CPLR 308 [5]

This Court finds alternative service on the New Jersey Defendants via the Court System's NYSCEF e-filing system and Chary's email address appropriate. Plaintiff established that statutory methods of service are impracticable as the New Jersey Defendants claim they are located out of country in the Dominican Republic and refuse to provide its designated address of service, (CPLR 308 [5]). Moreover, the New Jersey Defendants' counsel and the Defendants itself have endless access to NYSCEF, which appraises litigants of the action in detail. Court have designated acceptable methods of alternative services to ensure Defendants receive due process (see, *Wimbledon Fin. Master Fund, Ltd. v Laslop*, 169 A.D.3d 550 [1st Dept 2019]), citing (*Matter of Harner v County of Tioga*, 5 NY3d 136, 140, 833 NE2d 255, 800 NYS2d 112 [2005]; see *Kozel v Kozel*, 161 AD3d 700, 78 NYS3d 68 [1st Dept 2018], *lv dismissed* 32 NY3d 1089, 90 NYS3d 636, 114 NE3d 1089 [2018] [service by email]; *Alfred E. Mann Living Trust v ETIRC Aviation S.A.R.L.*, 78 AD3d 137, 141-142, 910 NYS2d 418 [1st Dept 2010] [service by email]; *Baidoo v Blood-Dzraku*, 48 Misc 3d 309, 5 NYS3d 709 [Sup Ct, NY County 2015] [service by Facebook]).

CONCLUSION

After a careful analysis of the facts presented, the parties total submissions, and weighing the competing interests of the parties, this Court providently grants Plaintiff an

extension of time to serve the Defendants for good cause shown and in the interest of justice, CPLR 306-b. Plaintiff demonstrated that the action was timely commenced, that service of the Summons and Complaint was timely made. Plaintiff believed service was good and genuinely made its best attempts to serve Defendants after Plaintiff's attorney diligent search of Defendants. Plaintiff has stated a meritorious claim as the facts allege, in detail, that Defendants highjacked Plaintiff's email account and changed banking instructions to divert Plaintiff's monies to Defendants accounts. There were no delays in serving the Defendants or requesting the Court to extend Plaintiff's time to serve. Plaintiff would be substantial prejudice if this motion was not granted as Defendants' have failed to comply with Court Orders and refuse to provide its address in the Dominican Republic. An extension of time to serve would not prejudice Defendants as they had immediate notice of the lawsuit as evidence by their emails denying fraud and thereafter filing its answer within weeks of service of the Summons and Complaint. (*see Hall v. L&A Operational, LLC*, 228 A.D.3d 846 [2nd Dept 2024]).

Thus, Plaintiff's (mot. seq. #4) to extend its time to serve pursuant to CPLR 306-b is **GRANTED in its entirety.**

Accordingly, it is

ORDERED that Plaintiff shall reserve the Summons and Complaint upon the New Jersey Defendants *nunc pro tunc* within 60 days of service of a copy of this Order with notice of entry, and it is further

ORDERED that Plaintiff shall serve The New Jersey Defendants via email, to Defendant's Chary email(s); and it is further

ORDERED that Plaintiff shall serve The New Jersey Defendants via the New York State Court Electronic Filing System, NYSCEF; and it is further

ORDERED that counsels are directed to submit to KSCCVCOMM2@nycourts.gov and NYSCEF a proposed Preliminary Conference Order on or before February 14, 2026.

ORDERED that all parties, attorneys and their clients, shall appear in person on February 25, at 10:00am, Court Room 756, at 360 Adams Street, Brooklyn, NY for settlement conference.

The foregoing constitutes the Decision and Order of this Court.

E N T E R:



Hon. Cenceria P. Edwards SCJ, CPA