

Buoncora v Aspiry Transp. Corp.

2025 NY Slip Op 35125(U)

December 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 17115/2011

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 17115/2011
Seqs. 015, 016, 017

Part 91

DOMINICK BUONCORRA,
Plaintiff,

against

ASPIRITY TRANSPORTATION CORP. AND D.
ZAGORUDNYUK AND ELISE SIMONELLI,
Defendants.

DECISION/ORDER

ASPIRITY TRANSPORTATION CORP. AND D.
ZAGORUDNYUK,
Third-Party Plaintiffs,

against

ELISE SIMONELLI,
Third-Party Defendants.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 1, 4-44.

Upon the foregoing papers, plaintiff’s counsel’s motion to restore and extend to time to serve (Seq. 015), defendants/third-party plaintiffs Aspiry Transportation Corp. and D. Zagorudnyuk (Aspiry)’s cross-motion to dismiss the action as abandoned (Seq. 016), and defendant/third-party defendant Elise Siomonelli’s cross-motion to dismiss the action as abandoned (Seq. 017) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained in a

motor vehicle accident on October 30, 2009. After conducting discovery, plaintiff filed his note of issue on February 27, 2020. The parties were scheduled for multiple appearances in the Jury Coordinating Part and were assigned a trial date on December 13, 2022. The parties settled before trial at a final pre-trial conference in the Jury Coordinating Part on November 2, 2022, and the action was disposed.

However, after reaching a settlement agreement, Mr. Buoncora refused to sign the general releases and consummate the settlement. Counsel has intimated the existence of a stipulation to vacate the settlement that was purportedly signed by all parties; however, despite multiple requests from the court, no party has provided a copy of such a stipulation, and it was not filed with the County Clerk or on NYSCEF after the case was converted to e-filing. Therefore, the action has remained disposed since November 2, 2022.

Plaintiff's counsel subsequently moved to be relieved as counsel, and that motion was granted on March 20, 2024. Counsel was directed to serve the order on Mr. Buoncora within ten days of the notice of entry; however, the order was never served upon plaintiff by plaintiff's counsel. That said, the record does indicate that defendants' mailed a copy of the order to the Mr. Buoncora on May 21, 2024, upon the belief that plaintiff's counsel had been relieved and the stay had expired.

Subsequently, Aspurity filed a motion to enforce the settlement agreement (Seq. 012), and plaintiff's counsel cross-moved to restore the action and vacate the settlement agreement (Seq. 013). On February 28, 2025, the court granted defendant's motion on default and noted that the action remained disposed; the court denied plaintiff's counsel's motion due to the non-appearance of counsel at both calendar calls.

Now, plaintiff's counsel seeks to restore the action and to extend the time to serve Mr.

Buoncora the underlying order relieving plaintiff's counsel from representation. Counsel's prior order to show cause to restore the action was rejected because it lacked a statement acknowledging a prior application for the same relief (CPLR 2217 [b]).

Restoration and Extension of Time

Plaintiff's counsel's motion to restore the action is predicated on counsel's inability to determine plaintiff's current whereabouts in the fourteen months between when the prior order granting counsel's motion to be relieved and the instant motion was filed. Counsel now contends that the Mr. Buoncora has been found, and there is an affidavit of service in the record indicating that the instant motion was served on Mr. Buoncora. Mr. Buoncora has not appeared at any of the scheduled court appearances and has not otherwise opposed the motion or indicated any intention to proceed with the litigation, despite being served with papers demonstrating the action's current procedural posture. Mr. Buoncora has also failed to tender any releases or other closing papers.

Although over a year has passed since the March 20, 2024 order, the record indicates Mr. Buoncora received a copy of the order from defense counsel. Since defense counsel and plaintiff's counsel both acted under the impression that plaintiff's counsel had been effectively relieved, and in light of Mr. Buoncora's apparent receipt of a copy of the order and failure to subsequently participate in litigation or otherwise appear, Bisogno & Meyerson's request for an extension of time to serve is granted. Bisogno & Meyerson shall serve the order on the Mr. Buoncora via first class and certified mail on or before January 23, 2026.

However, counsel's request for restoration is denied. This action was disposed based on the settlement of the action on November 2, 2022, as confirmed by this court's order dated February 28, 2025. Therefore, plaintiff's counsel's motion solely to restore is insufficient on its

face, as it does not make any argument for vacatur of the settlement and because plaintiff's counsel no longer actively represents Mr. Buoncora. Absent a stipulation to vacate the settlement, which no party has provided to the court to date, the court currently sees no basis to vacate the settlement.

Cross-Motions to Dismiss

CPLR 3404 governs the dismissal of actions that are on the trial calendar which are "abandoned" because they are not restored within one year of being "marked off." Defense counsel incorrectly claims that this case was marked off at a calendar appearance and should therefore be deemed abandoned under the statute. As held by the February 28, 2025 order, this action is disposed based on settlement, and that order has not been disturbed by stipulation, appeal, or a subsequent order. However, the court notes that Mr. Buoncora has not tendered settlement documents or participated in this litigation to date despite receiving actual notice of motions and appearances, and that confusion has perhaps resulted from counsel's seemingly well-intentioned continued involvement in the action despite an order relieving them. Therefore, defendants' cross-motions are denied and the action remains disposed pursuant to settlement. The denial of this motion is without prejudice to any future motions defendants' may be entitled to make pursuant to the CPLR once the issue of plaintiff's counsel's service of that March 20, 2024 order is resolved.


Conclusion

Bisogno & Meyerson's motion to restore and for an extension of time (Seq. 015) is granted solely to the extent that Bisogno & Meyerson shall serve the March 20, 2024 order upon Mr. Buoncora via first class and certified mail on or before January 23, 2026; the motion is otherwise denied.

Defendants' cross-motions to dismiss (Seqs. 016 and 017) are denied without prejudice.

This constitutes the decision of the court.

December 23, 2025
DATE


DEVIN P. COHEN
Justice of the Supreme Court