

**Banushi v Fort LaFayette Towers Corp.**

2026 NY Slip Op 30359(U)

January 29, 2026

Supreme Court, Kings County

Docket Number: Index No. 522376/2023

Judge: Joy F. Campanelli

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: IAS PART 6

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DASHNOR BANUSHI and MIMOZA BANUSHI,

*Plaintiff,*

- against -

FORT LAFAYETTE TOWERS CORP.; MARTIRE HOLDINGS, LLC; LORRAINE CATALANO; ANTHONY MARTIRE; LAWRENCE MARTIRE; KATHERINE MARTIRE-TIMPER; and BEVERLY WALDMAN; jointly and severally,

*Defendants.*

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Index No.: 522376/2023

**DECISION AND ORDER**

Hon. Joy F. Campanelli, J.S.C.

The following e-filed papers read herein:

Papers Numbered:

Seq. No. 001

Notice of Motion/Order to Show Cause/ Petition, Affidavits (Affirmations and Exhibits) Annexed	1,2
Opposing Affidavits (Affirmations and Exhibits)	3
Affidavits/ Affirmations in Reply	4
Other Papers (Proposed Order with Notice of Settlement):	_____

Defendants move by notice of motion sequence number 001 for and Order pursuant to CPLR 3214(c) dismissing the complaint with prejudice based upon plaintiff’s abandonment of her claims against Defendants; and pursuant to CPLR 3211(a)(8) dismissing the complaint with prejudice based upon plaintiff’s failure to obtain jurisdiction over the answering defendants, dismissing the amended complaint to the extent the time to file an amended complaint has expired, and for such other and further relief as the court finds just and proper. Plaintiff opposes.

The initial plaintiff, Dashnor Banushi, commenced this action in or about August 3, 2023, by the filing of a summons and complaint by his then counsel, Brandon David Sherr.

A stipulation dated March 19, 2025, purporting to extend the defendants time to answer or move with respect to the complaint to April 2, 2025, was executed by a Stephen D. Hans (“Hans”) on March 12, 2025.

Plaintiff did not file any affidavit of service alleging to have served any of the defendants in this action on NYSCEF or with the county clerk until June 4, 2025, purporting to have served the Defendants as of August 7, 2023.

Plaintiffs allege they satisfied the service requirements of the Summons and Complaint based upon the acknowledgements of service signed by five of the seven defendants filed on June 4, 2025.

Plaintiff filed an Amended Complaint on March 19, 2025.

Plaintiffs then filed a request for judicial intervention on April 14, 2025 (“RJI”).

On June 3, 2025, counsel for the defendants served a Notice of Rejection, based upon, inter alia, Plaintiffs’ abandonment of this action for more than two years.

In support of their motion defendants argue that plaintiff’s time to move for default expired in August of 2024, and that their Complaint must be dismissed due to several years of inaction. CPLR §3215(c) provides that if a plaintiff fails to take proceedings for the entry of a judgment within one year after default, the court shall not enter judgment but shall dismiss the complaint as abandoned without cost, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed. Defendants argue that the time to move for default ran from August 7, 2023, when the original Summons and Complaint was served, according to the acknowledgements of service filed by plaintiff. Plaintiff did not move for a default judgment within one year of that date. Defendants additionally argue that service was never effectuated on

two of the seven defendants, Martire Holdings LLC and Lorraine Catalano, and as such the Court is without jurisdiction over those two parties and the complaint must be dismissed as against them.

With respect to the stipulation extending time to serve, Defendants argue that Hans was never retained to represent them, nor were they represented by any other attorney up until the retention of Davidoff Hutcher and Citron LLP in or about June 3, 2025.

In opposition to the motion, plaintiffs argue that Hans was retained to represent defendants and that settlement negotiations were ongoing between Hans and counsel for plaintiffs during the period of alleged inaction. Next, plaintiff argues that the case should not be dismissed pursuant to CPLR 3215(c), because any delay in moving for default was for good cause, i.e. plaintiff's good faith reliance on these settlement discussions. Finally, plaintiff states that jurisdiction was properly obtained over defendants pursuant to CPLR 306-b and CPLR 308, referencing plaintiff's Exhibit 15, which purports to show the return receipts of the first-class mail of the mailed summons and complaint to the defendants on or about August 8, 2023.

In reply, defendants argue that CPLR 312-a requires that for an acknowledgement of service to be effective, the defendant would need to return the acknowledgement within thirty days of the mailing. An acknowledgement of service, they argue, dated October 24, 2023, relating to the August 7, 2023, certified mailing receipts "would be ineffective and statutorily defective on its face." *Aff in Reply* Para 7.

CPLR 312-A(b)-1 states that the defendant, an authorized employee of the defendant, defendant's attorney or an employee of the attorney must complete the acknowledgement of receipt and mail or deliver one copy of it within thirty (30) days from the date of receipt. Service is complete on the date the signed acknowledgement of receipt is mailed or delivered to the sender. The signed acknowledgement of receipt shall constitute proof of service. Here, in support of their

motion, defendant attaches seven certified mail receipts and seven signed return receipts. *Def. Exh.*

15. However, the signatures on the receipts are illegible. It is not possible to tell which defendant received the Summons and Complaint on which date by this proof. Plaintiff attaches signed acknowledgements of service dated October 24, 2023, from defendants Anthony Martire, Beverly Waldman, Katherine Martire, and Lawrence Martire. *Pltf. Exh. 3* It is illogical that Defendants could claim not to have been served properly due to their own delay in filing an acknowledgement of service. Additionally, defendants Anthony Martire, Beverly Waldman (individually and on behalf of Fort Lafayette Towers Corp.), Katherine Martire, and Lawrence Martire submitted a sworn affirmation in support of this motion. None of these defendants denies receipt of the Summons and Complaint that was served by certified mail on August 7, 2023. None of these Defendants denies having signed the acknowledgements of service dated October 24, 2023. Therefore, the Court will accept the acknowledgements of service dated October 24, 2023, as sufficient to demonstrate that service was completed on those defendants as of that date. Thus, Defendants' time to move for default ran from October 24, 2023.

With respect to plaintiff's arguments regarding the good cause for their delay in moving for default, it does not appear that Hans represented defendants during the time period at issue. Hans never filed a notice of appearance on this case. Nor does any party attach an executed retainer agreement between Hans and the Defendants. The only evidence submitted in support of the proposition that Hans was retained as counsel, is an email from an administrative assistant, Eve Tavarez, dated September 14, 2023, stating that Hans "expects to be retained and will file appropriate paperwork once the retainer is signed." *Pltf. Exh. 4*. Nothing was filed with the Court between the date of this email and March of 2025. However, it does appear that plaintiff relied on Hans's representations that he had authority to discuss settlement in good faith. Plaintiff attaches

multiple emails between counsel for plaintiff and Hans himself from the eighteen-month period between the date defendants were served and the date Hans filed the stipulation to extend defendants' time to answer. These emails demonstrate that Hans held himself out as defendants' counsel during this time period, and plaintiff's counsel was negotiating in good faith on their client's behalf to settle this case. In the interests of justice, plaintiff should not lose any potential for recovery because their counsel was attempting to settle the case with someone who held himself out as having authority to negotiate on defendants' behalf. Therefore, the Court finds that plaintiff's delay in moving for default was for good cause under the circumstances.

The Court finds that defendants Lorraine Catalano and Martire Holdings, LLC were not properly served. Therefore, the Court lacks jurisdiction over those parties and the Complaint as against them must be dismissed. Service was properly effectuated on Defendants Anthony Martire, Beverly Waldman, Fort Lafayette Towers Corp., Katherine Martire, and Lawrence Martire, based on the signed acknowledgements of service and the sworn affirmations filed in support of this motion. As to those defendants, the Court finds that plaintiff's delay in moving for default was reasonable as plaintiff's counsel was negotiating in good faith with Hans, who purportedly had authority to settle this case. As such, the claims as to the remaining defendants were not abandoned, and defendant's motion must be denied as to those defendants.

Therefore, it is hereby,


ORDERED that defendant's motion is granted to the extent that the Amended Complaint is dismissed as to defendants Lorraine Catalano and Martire Holdings, LLC, and it is hereby;

ORDERED that defendant's motion is denied in all other respects, and it is hereby;

ORDERED that the remaining defendants shall answer the Amended Complaint within thirty (30) days of service of this Order with Notice of Entry.

This constitutes the decision and order of the Court.

DATED: January 29, 2026  
Brooklyn, New York

  
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Hon. Joy F. Campanelli, J.S.C.