

<b>Fryar v St. Paul Community Church</b>
2026 NY Slip Op 30381(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 160777/2020
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. HASA A. KINGO PART 65M**

*Justice*

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TISHA FRYAR

Plaintiff,

- v -

ST. PAUL COMMUNITY CHURCH, 262 WEST 145TH V&A  
LLC, USA VEIN CLINICS LLC, ST. NICHOLAS MEDICAL  
OF NEW YORK LLC, MEDICAL MANAGEMENT  
PROFESSIONAL SERVICES, INC.

Defendants.

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**INDEX NO.** 160777/2020

**MOTION DATE** 11/25/2025

**MOTION SEQ. NO.** 005

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 135, 136

were read on this motion for DISMISSAL.

With the instant motion, defendant St. Paul Community Church (“defendant,” “the Church”) moves to dismiss plaintiff Tisha Fryar’s (“plaintiff”) complaint under CPLR §§ 3211(a)(2) and 3211(a)(1) and CPLR § 3215(c). Plaintiff opposes the motion.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff alleges that on June 22, 2020 she tripped and fell at 262 West 145th Street (Complaint, Exs. A-B). She filed this action on December 9, 2020 (Doc. 1) and an amended complaint on April 5, 2021 (Doc. 5). Plaintiff did not serve the Church within the 120-day period or obtain a timely extension (CPLR § 306-b). On April 21, 2022 plaintiff filed an Affidavit of Service dated April 9, 2022, claiming to have served the Church by delivering the summons and amended complaint to Rev. Horace Stewart (Doc. 16, Ex. C).

Plaintiff moved for default judgment against the Church on July 26, 2022 (Mot. Seq. No. 001, Ex. D). On September 7, 2022, Justice Hagler denied that motion, finding plaintiff had not shown prima facie proper service (decision and order, Ex. E). Plaintiff then refiled the affidavit of service on October 17, 2022, adding that Rev. Stewart was authorized to accept service (Ex. F). She made a second motion for default judgment on June 25, 2024 (Mot. Seq. No. 002, Ex. G). On July 29, 2024, Justice Hagler denied the second default motion, holding it untimely under CPLR § 3215(c) and noting plaintiff offered no reasonable excuse for the delay (decision and order, Ex. H).

Plaintiff thereafter moved (Aug. 21, 2025) for reargument of the July 2024 order and for an extension of time to serve the Church under CPLR § 306-b, as well as permission to use an

alternate method of service under CPLR § 308(5). Justice Reo granted reargument on December 23, 2025, vacated the July 29, 2024 order, but on reargument again denied default judgment as untimely and dismissed the complaint as abandoned, and denied the requested extension and alternate service.

On November 25, 2025, the Church filed the instant motion to dismiss (NYSCEF 96–106), arguing that the complaint must be dismissed for lack of jurisdiction (due to defective service) and as abandoned under CPLR § 3215(c), and seeking summary judgment in favor of the Church (and in favor of a co-defendant “Active,” though “Active” does not appear in the summons). Plaintiff opposed (NYSCEF 110) and the Church replied (NYSCEF 135). The motion is now fully submitted.

### ARGUMENTS

The Church contends that plaintiff never properly served it, and in any event, failed to timely seek a default judgment. It invokes CPLR § 3215(c), arguing plaintiff’s motions for default (filed in June 2024 and August 2025) came more than a year after the time to serve (and after the first default denial), with no excuse, so the complaint is “abandoned” and must be dismissed (*Brown v. Andreoli*, 81 AD3d 498 [1st Dept 2011]). The Church also argues that because plaintiff did not file a 306-b extension and mailed the summons (not using a process server or authorized agent properly), the court has no personal jurisdiction. In summary, the Church says plaintiff never made a prima facie showing of valid service and the case must be dismissed.

Plaintiff opposes Defendant St. Paul Community Church’s motion to dismiss, arguing that the motion is both procedurally improper and factually meritless. The opposition asserts that service of process was timely and proper under CPLR § 306-b, and that dismissal is unwarranted under CPLR §§ 3211(a)(2) and 3215(c). Indeed, plaintiff argues that service was effective (via Pastor Stewart) and that dismissing the motion now would unfairly reward the Church, essentially asking to be served and defaulted for a fourth time. As indicated, plaintiff has moved for extensions of time to serve and alternative service (308(5)), but the court has summarily denied those requests. In any event, plaintiff has submitted no new evidence distinguishing the Church’s showing.

In reply, the Church notes that Justice Reo has already found the complaint against the Church dismissed as abandoned and that plaintiff’s own submissions (Rev. Stewart’s affidavit) are insufficient or raise factual disputes.

### DISCUSSION

On a pre-answer motion to dismiss under CPLR § 3211, the court accepts the complaint’s allegations as true and gives them every favorable inference. However, the court may consider evidence outside the pleading, in which event the motion resembles a summary judgment motion. In that scenario, the court asks whether the pleader has a viable cause of action on the facts. Here, the Church has asserted as defenses lack of jurisdiction (due to improper service) and default abandonment. A defendant may move under CPLR § 3211(a)(8) (no jurisdiction over person) by

pointing out that service was not properly made.<sup>1</sup> In evaluating such a motion, the court may consider affidavits on the service issue. But even before service, CPLR § 3215(c) requires dismissal as abandoned if plaintiff did not seek default judgment within one year of default, absent an excuse.

Under CPLR § 3215(c), if a plaintiff “fails to take proceedings for the entry of judgment within one year after [a] default,” the court “shall” dismiss the complaint as abandoned, unless plaintiff shows sufficient cause to avoid dismissal. This dismissal is mandatory (the word “shall” is used) unless a reasonable excuse is shown.

Here, plaintiff’s second default motion was filed June 26, 2024 – well over a year after the Church’s default (which essentially occurred when the time to answer ran, presumed by the first motion). Justice Hagler’s July 29, 2024, order expressly found that the second motion came more than one year after the first default order and that plaintiff offered no excuse for the delay. Likewise, the December 23, 2025, order reiterated that no timely application to proceed was made and denied any further extension or relief. In short, plaintiff completely failed to timely prosecute her claim. As the Appellate Division, First Department, held in *Brown v. Andreoli*, a plaintiff “failed to demonstrate a reasonable excuse” for a delay over one year, and the motion court “should have dismissed the complaint as abandoned” (81 AD3d 498). *Brown v. Andreoli* squarely dictates dismissal here: the plaintiff’s motions for default were untimely and unjustified, so her claims against the Church must be dismissed (*see Perricone v. City of New York*, 62 NY2d 661 [1984])[Court of Appeals reversing denial of dismissal where no excusable delay]. To the extent the Church’s 3211 motion overlaps with this ground, it is well taken. Under CPLR § 3215(c), plaintiff’s complaint is deemed abandoned and is dismissed (*Brown*, 81 AD3d 498).

Independently, plaintiff’s complaint fails for lack of personal jurisdiction. A plaintiff must serve the defendant with the summons and complaint within 120 days of filing, or else obtain an extension under CPLR § 306-b. Here, plaintiff did not serve the Church until well beyond 120 days (her only proofs are dated April 2022, long after an April 2021 deadline), and she never timely sought a court order extending that deadline. Indeed, the December 23, 2025 order expressly denied any extension of time or alternate service. Thus under CPLR § 306-b(1), service beyond 120 days without court permission is ineffective (*see Bishop v. Uno Pizza*, 188 Misc.2d 142 [New York Cnty 2001]). Nor did plaintiff properly effect service by any other method. The affidavits on file admit that the documents were only mailed to the Church by regular mail; mailing alone is not a valid mode of service. Plaintiff’s original “service” attempt (April 2022) was rejected by the court for failing to show Stewart’s authority. She made no further attempts. Under these circumstances, the court has never acquired jurisdiction over the Church.

Pastor Stewart’s belated affirmation (filed with defendant’s reply) that he was handed to him on a pantry line at the Church “several years ago,” and that he received no mail about the suit until recently, does not save the day. To the contrary, it highlights the factual mess: if Stewart did receive the complaint, it was not within 120 days of December 2020 and no extension was sought, so service was still invalid. Moreover, plaintiff never produced a timely affidavit of service by a disinterested process server showing exactly how and when service occurred, as required by CPLR

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<sup>1</sup> Though the Church’s motion cites CPLR § 3211(a)(2), which governs subject-matter jurisdiction, the thrust is personal jurisdiction.

§ 3215(f) and basic due process. Because no valid service was accomplished, the Church was never properly brought into court. Even treated as a summary judgment context (since affidavits have been submitted), there is a factual dispute about service: Stewart’s account conflicts with plaintiff’s filings. That factual dispute alone would preclude dismissal on jurisdictional grounds at this stage. But in any event, absent proper service there can be no jurisdiction to proceed.

Plaintiff has not made the requisite prima facie showing that any proper service occurred within the statutory period. Her proofs are inadequate on their face, and the Church’s evidence (Stewart’s affidavit) contradicts plaintiff’s bare claim. Under *Rovello v. Orofino Realty Co.*, if extrinsic evidence is considered, the inquiry is whether plaintiff has any viable cause of action (40 NY2d 633 [1976]). Here, with no legal service, she has none. Moreover, the doctrine of law of the case dictates that Judge Reo’s December 23, 2025 decision – which vacated the prior order but again dismissed the complaint as abandoned – governs this motion (*Martin v. City of Cohoes*, 37 NY2d 162, 165-66 [1975]). Once a court of coordinate jurisdiction has “judicially determined” an issue, that determination should control subsequent proceedings in the same case. Judge Reo has already determined (and correctly) that the complaint against the Church is dismissed. That conclusion is now binding on this motion.

For all the foregoing reasons, defendant’s motion to dismiss is granted. Plaintiff’s complaint against St. Paul Community Church is dismissed in its entirety. The court finds that plaintiff failed to prosecute her case within the required time and her claim is deemed abandoned (CPLR § 3215[c]). In addition, plaintiff never effected proper service on the Church or obtained an extension of time to do so, depriving the court of jurisdiction. Accordingly, it is hereby

ORDERED that the motion is granted, and the complaint is dismissed with prejudice as against defendant St. Paul Community Church; and it is further

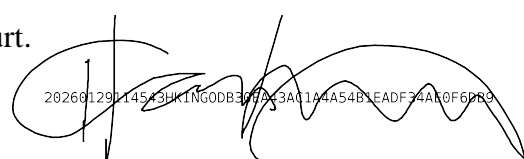
ORDERED that defendant St. Paul Community Church shall serve a copy of this decision and order, with notice of entry, upon plaintiff and upon the Clerk of the Court and the Clerk of the General Clerk’s Office; and it is further

ORDERED that service of this decision and order upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (available on the court’s website under the “E-Filing” page); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant St. Paul Community Church and to amend the records of this proceeding to reflect the removal of defendant St. Paul Community Church from the caption herein.

This constitutes the decision and order of the court.

01/29/2026  
DATE

  
HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION