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| <b>Foley v Booth</b>   |
| 2026 NY Slip Op 30554(U)   |
| January 14, 2026   |
| Supreme Court, New York County   |
| Docket Number: Index No. 157314/2024   |
| Judge: Christopher Chin  |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CHRISTOPHER CHIN PART 22

Justice

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CAROL A. FOLEY,

Plaintiff,

- v -

ESTHER BOOTH, BETHANY TOLENTINO

Defendant.

INDEX NO. 157314/2024

MOTION DATE 02/06/2025, 02/26/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for EXTEND - TIME

Upon the foregoing documents, submitted after oral argument, it is

ORDERED that the motion by plaintiff pursuant to CPLR 3215 (a) for the entry of a default judgment against defendants Esther Booth and Bethany Tolentino (motion sequence number 001), the cross-motion by defendant Tolentino to dismiss this action, and the motion by plaintiff pursuant to CPLR 306-b extending plaintiff's time to serve defendant Tolentino (motion sequence number 002) are decided as provided below.

BACKGROUND & PROCEDURAL HISTORY

On August 9, 2024, this action was commenced by plaintiff with the filing of a summons and verified complaint for injuries she allegedly sustained on August 10, 2021, when she was struck

by a motor vehicle owned by defendant Booth and being operated by defendant Tolentino. At the scene of the accident, plaintiff obtained a photograph of defendant Tolentino's driver's license which listed her address as, 19 Garden Street, Apartment 1, Hoboken, New Jersey (the "Hoboken, New Jersey address").

According to the affidavit of service submitted by plaintiff, on or about October 22, 2024 and November 5, 2024, defendants Tolentino and Booth were served with the summons and complaint, respectively, by delivery to individuals of suitable age and discretion, and mailing copies to defendants, in accordance with CPLR 308 (2) ("substituted service").<sup>1</sup>

As to defendant Tolentino, prior to the alleged October 22, 2024 substituted service, plaintiff claims she unsuccessfully attempted to serve defendant Tolentino at the address listed in the driver's license Tolentino presented on the date of the accident (the Hoboken, New Jersey address). Plaintiff also claims that she unsuccessfully attempted to serve defendant Tolentino at her place of business in Manhattan (at the law firm Arnold & Porter, at 250 West 55<sup>th</sup> Street, New York, NY). Plaintiff ultimately served defendant Tolentino, on or about October 22, 2024, by delivering the summons and complaint to defendant Tolentino's father (Eduardo Tolentino), at 42 Kelley Way, Parsippany, New Jersey (the "Parsippany, New Jersey address"), an address

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<sup>1</sup> CPLR 308 provides in relevant part that, "[p]ersonal service upon a natural person shall be made by any of the following methods:...(2) by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business..."

listed as belonging to defendant Tolentino in New York Department of Motor Vehicle's records and associated with defendant Tolentino via an address search conducted by plaintiff.<sup>2</sup>

On or about November 19, 2024, plaintiff filed a verified amended complaint to correct the license plate number of the vehicle that struck her. Service of the amended complaint was thereafter made on defendants on or about December 6, 2024, by substituted service on defendant Booth (pursuant to CPLR CPLR 308 [2]), and by nail and mail service on defendant Tolentino (pursuant to CPLR 308 [4]) at the Parsippany, New Jersey address.

On or about February 6, 2025, plaintiff filed the within motion (motion sequence number 001), pursuant to CPLR 3215 (a), for the entry of a default judgment against both defendants, based upon their failure to answer or appear in this action. Defendant Esther Booth failed to submit opposition to plaintiff's motion or file a cross-motion and therefore, is in default.

Defendant Tolentino did not file an answer and instead, cross-moved to dismiss this action pursuant to CPLR 3211 (a)(8), based on lack of personal jurisdiction. Defendant Tolentino argues that since the location of the alleged substituted service was neither Tolentino's residence, nor her place of business, personal jurisdiction was not obtained over her. Specifically, defendant Tolentino maintains that the alleged service at 42 Kelley Lane, Parsippany, NJ 07054, on or about October 22, 2024, was improper because, since September 2, 2023, she resided at 247 West 122<sup>nd</sup> Street, Apartment Number 1, New York, New York 10027. Defendant Tolentino

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<sup>2</sup> Plaintiff also alleges that a copy of the summons and complaint was emailed to defendant Tolentino at her business email address.

therefore argues that since plaintiff failed to serve the complaint within 120 days of commencement of the action, dismissal is warranted, under CPLR 306-b. Additionally, defendant Tolentino argues that service of the amended complaint by plaintiff without leave of court was improper.

In opposition to the cross-motion plaintiff maintains that service of the pleadings was properly made on defendant Tolentino by substituted service under CPLR 308 (2), at the address she identified as her residence with both the NY Department of Motor Vehicles and the New Jersey Board of Election - 42 Kelley Lane, Parsippany, NJ 07054. Plaintiff points out that the address defendant Tolentino now alleges to be her current residence – 247 West 122<sup>nd</sup> Street, number 1, New York, NY 10027 - did not come up on any search performed by plaintiff's process server. Plaintiff further maintains that she properly amended her original complaint before the time to answer expired.

Plaintiff filed a second motion (Motion Sequence No. 002), pursuant to CPLR 306-b, for an extension of time to serve defendant Tolentino, should this court find that plaintiff's original service upon defendant Tolentino (on October 22, 2024) was insufficient. Plaintiff argues, without conceding that service upon defendant Tolentino was improper, that an extension is warranted given that she exercised reasonable diligence in attempting to initially serve defendant Tolentino at the address listed on her driver's license at the time of the accident, at her actual place of business in Manhattan, and eventually at an address listed on the last known address search, in Parsippany, New Jersey. Plaintiff further argues that an extension is also warranted in

the interest of justice, since the statute of limitations for commencing suit for the injuries plaintiff sustained on August 10, 2021, has expired. Plaintiff also maintains that her claims have merit.

## DISCUSSION

### Motion for Default Judgment Against Defendants

Upon review of the submissions, it is

ORDERED that the portion of plaintiff's motion for a default judgment pursuant to CPLR 3215 (a) is granted as to liability against defendant Esther Booth, based upon her failure to answer or move in this action; it is further

ORDERED that an inquest shall be held at the time of trial, or shortly thereafter (with scheduling to be determined at the discretion of the trial judge), assessing damages against the defaulting defendant Booth and entering judgment in accordance therewith; it is further

ORDERED that, in the interest of justice, the portion of the motion by plaintiff pursuant to CPLR 3215 (a) for the entry of a default judgment against defendant Bethany Tolentino is granted, *unless within 20 days of service of a copy of this order with notice of entry*, defendant Tolentino serves and files an answer.

As stated, plaintiff served defendant Tolentino pursuant to CPLR 308 (2) – delivering the summons and complaint to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and mailing a copy to the last known residence or actual place of business – by delivering the pleadings to Tolentino's father, at 42 Kelley Way, Parsippany, New Jersey. The address where plaintiff ultimately served defendant

Tolentino (the Parsippany, New Jersey address), is the address listed as her address, by the Department of Motor Vehicles, as well as the Board of Elections. While defendant Tolentino maintains she did not reside at such address at the time of service and therefore she was not properly served, the court finds that defendant is estopped from contesting service of process at the address listed with the Department of Motor Vehicle, since she failed to notify the Department of Motor Vehicles of the change in her address, as mandated by both the New Jersey and New York governing statutes (*see* New Jersey Title 39 Motor Vehicles and Traffic Regulation 3C-10; NY Vehicle & Traffic Law 505 (5)<sup>3</sup>; *Williams v Yassky*, 199 AD2d 18, 19 [1<sup>st</sup> Dept 1993] [the defendant's failure to notify the DMV of the change in her address as required by VTL 505 (5), estopped her from contesting the service of process]; *Stillman v City of New York*, 39 AD3d 301, 303 [1<sup>st</sup> Dept 2007] [dismissal for lack of personal jurisdiction was held not to be warranted since the defendant failed to notify the Department of Motor Vehicles of his change of address within 10 days of the change as required by VTL 505 (5), estopping defendant from challenging the propriety of service made at the former address]).<sup>1</sup> Moreover, in support of her motion contesting personal jurisdiction, defendant failed to submit an affidavit in which she unequivocally denied receiving service of process (*see Walkes v Benoit*, 257 AD2d 508 [1<sup>st</sup> Dept 1999] [in order to rebut an affidavit of service and test the validity of service, a defendant must personally contest the service]).

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<sup>3</sup> Both the New Jersey and the New York statutes provide that it is the duty of the licensee to notify the commissioner/commission in writing of any change of residence of a licensee. In New Jersey the provision requires that notification be made within one (1) week and in New York notification is required within ten days of any change (*see* New Jersey Title 39 Motor Vehicles and Traffic Regulation 3C-10; NY Vehicle & Traffic Law 505 [5]).

CONCLUSION

Based upon the above, it is further

ORDERED that the cross-motion by defendant Tolentino to dismiss this action is denied, and the motion by plaintiff pursuant to CPLR 306-b extending plaintiff's time to serve defendant Tolentino (motion sequence number 002) is deemed moot;<sup>4</sup> and it is further

ORDERED plaintiff shall serve a copy of this order upon all parties, within 20 days of the date of entry of this order.

Any other argument by the parties which has not been specifically granted in this decision has been considered and is either moot or denied.

1/14/2026  
DATE

  
CHRISTOPHER CHIN, J.S.C.

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

<sup>4</sup> While based upon the decision herein the court need not reach the merits of plaintiff's motion for an extension of time to serve defendant Tolentino under CPLR 306-b, the court notes that there was merit to plaintiff's motion based upon good cause shown and in the interest of justice (see *Leader v. Maroney*, 97 NY 2d 95 [2001]; *Galindo v. Doherty*, 234 AD3d 571 [1<sup>st</sup> Dept 2025]; *Kaufman v Bauer*, 36 AD3d 481 [1<sup>st</sup> Dept 2007]; *Dixon v New York City Health and Hosp. Corp.*, 222 AD3d 553, 554 [1<sup>st</sup> Dept 2023]).