

Toribio v Rahmania Props., LLC.
2017 NY Slip Op 32784(U)
December 21, 2017
Supreme Court, Queens County
Docket Number: 709140/16
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

-----x
JUAN TORIBIO,

Index No. 709140/16

Plaintiff,

Motion

Date: September 18, 2017

-against-

M# 2

RAHMANIA PROPERTIES, LLC., GRAMEEN NOBEL
REALTY, LLC, ET AL.,

FILED
JAN 10 2018
COUNTY CLERK
QUEENS COUNTY

Defendants.
-----x

The following papers numbered EF 28-58 read on this motion by defendant Mohammed A. Rahman s/h/a Mohammed M. Rahman a/k/a Mohammed A. Rahman for an order dismissing the complaint on the ground of lack of jurisdiction; and cross motion by the plaintiff for an order amending the caption and permitting him to effectuate late service of the summons and complaint.

PAPERS
NUMBERED

Notice of Motion - Affidavits - Exhibits.....	EF 28-40
Notice of Cross Motion - Affidavits - Exhibits..	EF 42-49
Affirmation in Opposition - Exhibits.....	EF 50-54
Replying Affirmation	EF 55-58

Upon the foregoing papers it is ordered that this motion by defendant Mohammed A. Rahman s/h/a Mohammed M. Rahman a/k/a Mohammed A. Rahman for an order dismissing the complaint and cross motion by the plaintiff for an order permitting him to effectuate late service of the summons and complaint and amend the caption are decided as follows:

The instant personal injury action was commenced by filing a summons and complaint on August 4, 2016. Defendant Mohammed A. Rahman now moves to dismiss the action on the ground that the summons and complaint were not served upon him. Plaintiff cross moves for leave to extend his time to effectuate service of the summons and complaint upon the said defendant and also to amend the caption.

One affidavit of service herein alleges that the summons and complaint were served upon defendant Mohammed M. Rahman a/k/a Mohammed A. Rahman on August 24, 2016 at 40-32 74th Street, c/o Global Medical Care, Elmhurst, N.Y. The affidavit of service states that the summons and complaint were delivered to Krishna Kahn, a co-worker, as a person of suitable age and discretion. The affidavit further states that a copy of the summons and complaint were mailed to the defendant at the above address. Furthermore, an additional affidavit of service states that the summons and complaint were served upon the defendant at 64 Princeton Street, Roslyn Heights, N.Y. by delivering a copy to "Jane Rahman", Relative, a person of suitable age and discretion. The affidavit further states that a copy of the summons and complaint were mailed to the defendant at the Roslyn Heights address.

In support of the motion, defendant Mohammed A. Rahman denies that service of process was ever effectuated upon him as set forth in the affidavits of service. He avers that he never had any involvement with the premises located at 40-32 74th Street in Elmhurst. Rather, he explains that his brother, Mohammed M. Rahman, is a physician with an office located at the said address. He further avers that he never authorized his brother to accept the delivery of legal papers on his behalf nor did he designate his brother to be his agent for the purpose of receiving legal papers. In addition, defendant Mohammed A. Rahman avers that he never resided at 64 Princeton Street in Roslyn Heights, New York. He explains that his brother resides at that address. Moreover, defendant states that no one who resided at the Roslyn Heights address was ever authorized to accept legal papers on his behalf.

CPLR 306-b requires that service of process be made upon the defendant within 120 days after the action was commenced. (*Burwell v Yonkers Gen. Hosp.*, 6 AD3d 478, 480 [2d Dept 2004].) The statute further provides that the time for such service can be extended "upon good cause shown or in the interest of justice." (see *Garcia v Simonovsky*, 62 AD3d 655, 656 [2d Dept 2009]; *Robles v Mirzakhmedov*, 34 AD3d 554, 554 [2d Dept 2006].) "Good cause" requires a threshold showing that the plaintiff has made reasonably diligent efforts at service, while the "interest of justice" standard provides a more flexible ground for the exercise of the court's discretion. (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104 [2001].) Indeed, "[t]he interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties." (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d at 105; *Agudo v Zhinin*, 94 AD3d 680, 681 [2d

Dept 2012].)

Here, it appears that Mohammed M. Rahman and Mohammed A. Rahman are two different people, and that defendant Mohammed A. Rahman was neither named in the caption properly nor served with process. Thus, plaintiff seeks to amend the caption and requests additional time to serve Mohammed A. Rahman.

The court finds that the plaintiff established that the interest of justice requires an extension of time to effectuate service of process. If the time for service is not extended, this case as against Mohammed A. Rahman will be barred by the Statute of Limitations. (see *DiBuono v Abbey, LLC*, 71 AD3d 720, 720 [2d Dept 2010].) Indeed, the subject personal injury incident occurred on February 14, 2014. In addition, plaintiff has submitted an affidavit of merit and has also shown that the defendants will not be prejudiced by the extension of time. (*US Bank N.A. v Saintus*, 153 AD3d 1380 [2d Dept 2017]; *Abu-Aqlein v El Jamal*, 44 AD3d 884, 885 [2d Dept 2007].)

Accordingly, this motion by defendant Mohammed A. Rahman s/h/a Mohammed M. Rahman a/k/a Mohammed A. Rahman for an order dismissing the complaint is denied.

The branch of the cross motion to amend the caption is granted, and "Mohammed A. Rahman" is substituted as defendant in the place and stead of defendant "Mohammed M. Rahman a/k/a Mohammed A. Rahman." The caption shall now read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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JUAN TORIBIO,

Index No. 709140/16

Plaintiff,

-against-

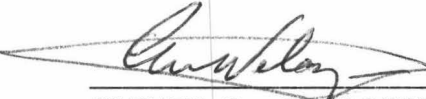
RAHMANIA PROPERTIES, LLC., GRAMEEN NOBEL
REALTY, LLC, MOHAMMED A. RAHMAN and
APOLLO MEDICAL DIAGNOSTIC SERVICES, PLLC.

Defendants.
-----x

The branch of the motion for an order extending the time to effectuate service of process is granted, and the time for plaintiff to effectuate service of process upon defendant Mohammed A. Rahman is extended through and including February 23, 2018.

A copy of this order is being faxed on this date to both sides.

Date: December 21, 2017



CARMEN R. VELASQUEZ, J.S.C.

FILED
JAN 10 2018
COUNTY CLERK
QUEENS COUNTY