

**Park Ave. Interiors, Inc v Desarrollos Hotelco Aruba
NV**

2021 NY Slip Op 30217(U)

January 19, 2021

Supreme Court, New York County

Docket Number: 654227/2019

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE **PART** **IAS MOTION 63M**

Justice

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PARK AVENUE INTERIORS, INC.,

Plaintiff,

- v -

DESARROLLOS HOTELCO ARUBA NV, DESARROLLOS
HOTELCO CORPORATION ARUBA HOLDING NV,
DESARROLLOS HOTELCO CORPORATION DHC ARUBA
NV, DESARROLLOS HOTELCO CORPORATION ARUBA
HOLDING CARACAS SA, RITZ CARLTON HOTEL ARUBA,
WALTER STIPA, ISABEL STIPA-HERNANDEZ, LUIS
HERNANDEZ, HOTELCO INTERNATIONAL
ACQUIREMENTS LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, plaintiff's motion seeking leave pursuant to CPLR 3025(b) seeking leave to file an amended complaint, seeking an extension of time to serve process pursuant to CPLR 306-b and seeking an order, pursuant to CPLR 104, directing attorneys for defendants who have already appeared in this action to accept service of process on behalf of the unserved defendants.

Plaintiff commenced this action by filing a summons and complaint on July 24, 2019 seeking to recover for the alleged non-payment of an invoice in the amount of \$50,695.31 dated November 8, 2013 issued by Plaintiff to an entity purportedly named "Desarrollos Hotelco Aruba N.V." The Defendants named in the Complaint in this action were (1) Desarrollos Hotelco Aruba N.V.; (2) Desarrollos Hotelco Corporation Aruba Holding, N.V.; (3) Desarrollos Hotelco Corporation DHC Aruba, N.V.; (4) Desarrollos Hotelco Corporation Aruba Holding Caracas, S.A.;

(5) Ritz-Carlton Hotel Aruba; (6) Walter Stipa, who is alleged to control all of the Hotelco entities; (7) Stipa's daughter Isabel Stipa Hernandez ("Isabel"); (8) Stipa's son-in-law Luis Jose Hernandez Grove ("Luis"); and (9) Hotelco International. The claims against the Aruba entities and Walter Stipa are for professional design work as invoiced and the claims against Isabel and Luis allege that they were unjustly enriched as they received upgrades to an apartment that they own through an entity known as CPS 8CDE Corp.

Pursuant to CPLR 306-b, because this action was commenced on July 24, 2019, Plaintiff was required to serve all defendants named in the Complaint by November 21, 2019. Defendants Desarrollos Hotelco Aruba N.V.; Desarrollos Hotelco Corporation Aruba Holding, N.V.; Desarrollos Hotelco Corporation DHC Aruba, N.V.; Desarrollos Hotelco Corporation Aruba Holding Caracas, S.A.; and Ritz-Carlton Hotel Aruba (collectively the "Non-Served Defendants") were never served with the Summons and Complaint and it does not appear that plaintiff made any attempt to serve said entities with the summons and complaint in this action.

Following oral argument held on May 20, 2020, this action was dismissed as against Walter Stipa, Isabel Stipa-Hernandez, Luis Hernandez and Hotelco International Acquirements, LLC, based upon plaintiff's failure to state a cause of action.

Plaintiff's now moves seeking leave pursuant to CPLR 3025(b) to file an amended complaint, *inter alia*, adding CPS 8CDE Corp as a party defendant, seeking an extension of time to serve process pursuant to CPLR 306-b and seeking an order, pursuant to CPLR 104, directing attorneys for defendants who have already appeared in this action to accept service of process on behalf of the unserved defendants.

It is well established that leave to amend is to be freely granted under CPLR 3025(b). As the applicable statute of limitations expired six years after the date of the invoice, plaintiff relies

on the relation back doctrine in order to add CPS 8CDE Corp as a party defendant. As discussed in *Buran v. Coupal*, 87 N.Y.2d 173 (1995) “ the three conditions that must be satisfied in order for claims against one defendant to relate back to claims asserted against another are that: (1) both claims arose out of same conduct, transaction or occurrence, (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for a ... mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well.” It is undisputed that the claims asserted against the Stipas which plaintiff now wishes to assert against CPS 8CDE Corp. arise out of the same occurrence and it is arguable that CPS 8CDE Corp is united in interest with said defendants, however it cannot be argued that plaintiff made a mistake as to the identity of the proper parties. Plaintiff specifically refers to CPS 8CDE Corp. in its initial complaint and now claims that not including same as a party defendant was a mere oversight. While it may have been so, plaintiff was aware of the proper party to this action and failed to include them during the relevant limitations period. As such, the portion of plaintiff’s motion seeking to add CPS 8CDE Corp as a party defendant must be denied.

Plaintiff also seeks an extension of time to serve the Aruban Corporate defendants. Where service was not timely made, the court may, within its discretion, extend the time for service upon either good cause or in the interest of justice. CPLR 306-b; *Nunez-Ariza v. Nell*, 161 A.D.3d 614, 614 (1st Dep’t 2018); *Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 101 (2001). Plaintiff makes no argument regarding good cause as plaintiff does not appear to have ever attempted to serve said defendants during the initial 120 day period and as such relies upon the “interest of justice” standard. In evaluating the interest of justice standard, "the court may consider diligence,

or lack thereof along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiffs request for the extension of time, and prejudice to defendant, *Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106 (2001)). "In determining whether to grant an extension of time in the interest of justice, '[n]o single factor is determinative'" *Id.* As discussed *supra* plaintiff has not diligently attempted to serve the Aruban defendants, citing the expense of same. The Court also notes that plaintiff did not move for an extension of time to serve said defendants until after this Court had dismissed the claims against all other defendants, when plaintiff should have been aware of said possibility upon the filing of defendants' motions to dismiss on December 2, December 5 and December 6, 2019 respectively. Specifically, plaintiff's time to serve said defendants expired on November 21, 2019 and the instant motion was filed June 22, 2020, seven months later. Plaintiff alleges that it has a facially valid case against the Aruban entities as they have not shown payment of the subject invoice and because the invoiced entity, "Desarrollos Hotelco Aruba N.V." apparently does not exist. Plaintiff's entire case against the other Aruban entities, who were not invoiced, is that they are alter egos with similar names to the invoiced entity, which is itself speculative. The sole argument in plaintiff's favor is that the Statute of Limitations will have expired against said unserved entities if plaintiff is not permitted an extension of time to serve. Plaintiff was aware of this problem and still made no attempt to serve said defendants within 120 days of filing. As such, the Court, in its discretion declines to grant an extension of time to serve this action.

Plaintiff's motion is hereby denied in its entirety and it is hereby

ORDERED that this action is dismissed as this action has been previously dismissed as against all served defendants and plaintiff has failed to timely serve the remaining defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

1/19/2021

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE