

<b>Ladder Capital Fin. LLC v Paul</b>
2021 NY Slip Op 30321(U)
February 1, 2021
Supreme Court, New York County
Docket Number: 650728/2020
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ANDREW BORROK **PART** **IAS MOTION 53EFM**

*Justice*

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LADDER CAPITAL FINANCE LLC

Plaintiff,

- v -

NATIN PAUL,

Defendant.

-----X

**INDEX NO.** 650728/2020

**MOTION DATE** 05/19/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 78, 79

were read on this motion to/for

DISMISS

Upon the foregoing documents, Natin Paul's (the **Defendant**) motion to dismiss pursuant to CPLR §§ 3211 (a)(4) and (a)(8) is denied. The Defendant's arguments that the action should be dismissed (i) for lack of jurisdiction due to improper service and (ii) in favor of the Bankruptcy Proceeding (hereinafter defined) fail.

Pursuant to CPLR § 308(4), "[w]here service under paragraphs 1 and 2 cannot be made with due diligence" service may be made "by affixing a summons to the door of either the actual ... dwelling place or usual place of abode" and by mailing the summons to such person at his last known residence. Upon the record before the court, two process servers attempted to serve the Defendant at his address on three different occasions before resorting to nail and mail service (*id.*).

In an affidavit dated July 7, 2020, Dana McMichael explained that she was the owner of Assured Civil Process Agency and her office received a summons and amended complaint for the Defendant at “7800 Cava Place, Austin, Tx 78735” (NYSCEF Doc. No. 78). On February 13, 2020, Kelly Murski attempted to serve the Defendant but was unable to do so because the Defendant’s home is a gated property. At that time Ms. Murski spoke with a woman who identified herself as the Defendant’s mother-in-law and advised that the Defendant was not at home (*id.*). On February 22, 2020, Matthew Murski attempted service over the weekend and again could not access the gated property. Although Mr. Murski spoke with the babysitter and asked for the Defendant or his wife, the babysitter simply returned to the house and no one came out after 10 minutes. Mr. Murski reported that at that time he saw a white Bentley parked at the address, which was registered to the Defendant (*id.*). On February 26, 2020, Ms. Murski again attempted unsuccessfully to personally serve the Defendant. On March 2, 2020, then Ms. Murski attached the papers to the gate of the address on March 2, 2020 (*id.*). Under these circumstances, service was proper.

It is of no moment that Ms. Murski misspelled the Defendant’s address with a letter “r” as opposed to a “v” on her affidavits of service, respectively dated March 2, 2020 and March 3, 2020 (NYSCEF Doc. No. 52). The process server testified that she had spoken with the Defendant’s mother in law at the correct address earlier and the Defendant admitted to finding the papers that were left at his address (NYSCEF Doc. No. 55, ¶ 10; *see also (Security Mut. Life Ins. Co. v. DiPasquale*, 271 A.D.2d 268, 268 [1st Dept 2000] [defendant’s official address was “55 Old Turnpike Road” but plaintiff’s mailing to “55 Old Turnpike Way” acceptable where no

evidence that mail would not be delivered if addressed in the latter manner]). Thus, there has been no prejudice to the Defendant, who timely filed papers to dismiss.

Pursuant to CPLR § 3211 (a)(4), an action may be dismissed if another action was first filed in another court (*Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 95 [1st Dept 2013]). Inasmuch as the Defendant claims that this action, commenced on January 31, 2020, should be dismissed in favor of a voluntary petition for bankruptcy, filed on February 3, 2020 in the United States Bankruptcy Court for the District of Delaware (the **Bankruptcy Proceeding**; NYSCEF Doc. No. 29), the argument fails. The Bankruptcy Proceeding was filed after and not before this action. In any event, the parties in the two matters are not sufficiently similar to warrant dismissal because this action involves an individual guarantor to a certain loan while the Bankruptcy Proceeding relates to obligations of corporate entities that were borrowers of the loan.

Finally, the branch of the Defendant's motion for a stay pursuant to CPLR § 2201 is denied because the relief sought pursuant to certain guaranty agreements in this action are separate from the relief sought in the Bankruptcy Proceeding.

Accordingly, it is

ORDERED that the Defendant's motion to dismiss is denied; and it is further

ORDERED that the Defendant shall file an answer within 20 days of this decision and order; and it is further

ORDERED that the parties shall appear for a remote preliminary conference on March 11, 2021 at 12pm.

  
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2/1/2021  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: