

Taveras v City of New York

2022 NY Slip Op 33369(U)

October 5, 2022

Supreme Court, New York County

Docket Number: Index No. 153810/2021

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

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UZIEL TAVERAS,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTION, CAPTAIN BERNARD MATHIS, CORRECTION OFFICER AHMED BUTLER, CORRECTION OFFICER HASHIM HAYNES, CORRECTION OFFICER ALEKSANDR GALUIZEVSKIY, CAPTAIN NIGEL GRAHAM, CORRECTION OFFICER SHAUN HANSEN, CORRECTION STEVEN MAIORINO

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to EXTEND - TIME

On April 20, 2021, plaintiff commenced this action by summons and complaint asserting claims for, inter alia, negligence and excessive force against: (i) the City of New York (the "City"); (ii) the New York City Department of Correction ("DOC" and, with the City, the "Municipal Defendants"); and (iii) DOC employees Captain Bernard Mathis, Ahmed Butler, Hashim Haynes, Aleksandr Galuzevskiy, Nigel Graham, Shaun Hansen and Steven Maiorino (NYSCEF Doc. No. 1 [Complaint]).

Plaintiff effected service of the summons and complaint on the Municipal Defendants on May 12, 2021 and effected service of the summons and complaint on Mathis, Butler, Haynes, Graham, and Maiorino (collectively, the "Answering Defendants") on June 17, 2021. On April

27, 2022, the Municipal Defendants and the Answering Defendants jointly interposed an Amended Answer (NYSCEF Doc. No. 44 [Amended Answer]).

Plaintiff has been unable to effect service on Galuzevskiy and Hansen, however. Plaintiff attempted to serve them on May 12, 2021 at the Manhattan Detention Complex, 125 White Street, New York, NY 10013 but was referred to the DOC legal department, which advised plaintiff that both Galuzevskiy and Hansen were on military leave and that the DOC legal department could not reveal any information about their whereabouts (NYSCEF Doc. No. 50 [Affirmation of Attempted Service]). Plaintiff subsequently sought Galuzevskiy and Hansen's locations by letter to the U.S. Army, dated July 21, 2021 (NYSCEF Doc. No. 51). In response, the U.S. Army indicated to plaintiff that, for security reasons, Galuzevskiy and Hansen's locations would not be disclosed.

Accordingly, plaintiff now moves for an order: (i) pursuant to CPLR §306-b, extending his time to serve Galuzevskiy and Hansen with the summons and complaint; and (ii) compelling DOC to disclose Galuzevskiy and Hansen's home addresses or directing an alternative means of service pursuant to CPLR §308(5). Plaintiff has not filed formal opposition to the instant motion, instead submitting an affidavit from DOC's payroll director, Sherbreina Watson, attesting that Galuzevskiy and Hansen remain on military leave from DOC (NYSCEF Doc. No. 56). Watson does not indicate when they are expected to return from service (Id.).

DISCUSSION

That branch of plaintiff's motion seeking an extension of time to serve Galuzevskiy and Hansen is granted. Plaintiff's undisputed diligence in attempting to ascertain Galuzevskiy and Hansen's location to effect service on them establishes good cause for an extension of time to effect such service under CPLR §306-b (See Greco v Renegades, Inc., 307 AD2d 711, 712 [4th

Dept 2003] [trial court properly extended plaintiff's time to effect service based on demonstrated difficulty in locating defendant, a member of the military, despite good faith efforts]).

That branch of plaintiff's motion to compel the City to produce Galuzevskiy and Hansen's home address or to order an alternative method of service is granted to the extent set forth below. Plaintiff has demonstrated that service on Galuzevskiy and Hansen pursuant to CPLR §§308(1), (2) and (4) is impracticable and the Court concludes that, in light of the unusual circumstances presented here, service by email is reasonably calculated to apprise the defendants of the pendency of this action (See LCX Ag v 1.274M U.S. Dollar Coin, 2022 N.Y. Slip Op. 32834[U], 6 [Sup Ct, NY County 2022] ["alternate service methods using social platforms and technology are designed for such service where defendants' identity is known, but their location is a mystery"]). Accordingly, the Court directs that plaintiff shall effect service on Galuzevskiy and Hansen by electronic means via email to their respective email addresses. In connection with the foregoing, the Court directs that the Municipal Defendants are directed to provide all email addresses for Galuzevskiy and Hansen in the possession of the Municipal Defendants to plaintiff's counsel within fourteen days of the date of this decision and order.

Accordingly, it is

ORDERED that the branch of plaintiff's motion for an order extending his time to serve Galuzevskiy and Hansen with the summons and complaint is granted; and it is further

ORDERED that plaintiff's time to serve the summons and complaint on Galuzevskiy and Hansen is extended for 120 days from the date of this decision and order; and it is further

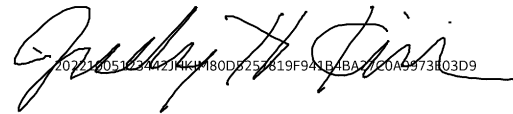
ORDERED that counsel for the City of New York and Department of Correction are directed to provide plaintiff's counsel with all email addresses for Galuzevskiy and Hansen in their possession within twenty days of the date of this decision and order; and it is further

ORDERED that plaintiff shall serve the summons and complaint, along with a copy of this decision and order, in PDF format, upon Galuzevskiy and Hansen via email using the email addresses provided by the City of New York and Department of Correction; and it is further

ORDERED that counsel for the City of New York is directed to immediately inform plaintiff and the Court in writing when Galuzevskiy and Hansen each return from military leave; and it is further

ORDERED that within twenty days of entry, plaintiff shall serve a copy of this decision and order with notice of its entry upon all parties, the Clerk of the Court (60 Centre St., Room 141B), and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119) in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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10/5/2022

DATE

HON. JUDY H. KIM, 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