



## Blue Lagoon LLC v Roth

2024 NY Slip Op 34051(U) (2024) | Cited 0 times | New York Supreme Court | October 10, 2024

Blue Lagoon LLC v Roth 2024 NY Slip Op 34051(U) October 10, 2024 Supreme Court, Kings County  
Docket Number: Index No. 520776/2016 Judge: Leon Ruchelsman Cases posted with a "30000"  
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opinion is uncorrected and not selected for official publication. Jlf -s r: o'. 1 ::rr cu: 1 ;-11\_ • U l,  
----- 2Dl/J. . ~' !v-

43~ FILED: KINGS COUNTY CLERK 11/15/2024 12:53 PM INDEX NO. 520776/2016 NYSCEF DOC.  
NO. 37 RECEIVED NYSCEF: 11/15/2024

1 of 4 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS : CIVIL TERM :  
PART 16 IS A 39 BLUE LAGO ON LLC , Plaintiff, Decision and order - against - Index No.  
520776/2016 MOSHE ROTH, Defendant, October 10 , 2024 - -----x  
PRESENT : HON . LEON RUCHELSMAN Motion Seq . #2 and #3

The defendant has moved seeking to vacate a default judgement dat ed J uly 1 , 2019 . The defendant  
has cross-moved seeking an

extension of time in which to serve the defendant . The motions

have been opposed respectively and papers submitted by the parties.

After revi ewing all the arguments this court now makes the following determination .

On January 23 , 2007 the de f endant Moshe Roth executed a note

wherein he borrowed \$185 , 120. This lawsui t was commenced in March

2017 by filing a motion for summary judgement in lieu of a compl aint . On March 1, 2017 the  
defendant was served with process by serving the defendant ' s fathe r at the defendant's address  
locat ed at 1568 Street in Kings County. On July 1 , 201 9 a judgement was entered in t he amount of  
\$270,295 . 42 .

The defendant now seeks to vacate the default on the grounds he was never served with process .  
First, h e asserts t here is no proof he was ever served with the summons . Mo r eover, the affidavit of



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service concerning the notice of motion fails to indicate the apartment number of the defendant's residence. Thus, service was

[\* 1] must alternatively seek re-service.

Conclusions of §3213 that where

serve summons for and

papers in

Corp., 144AD2d 626, 535 NYS2d the summons

of motion. stated the proceeded way for.

not dispense requirement a: summons is process

whether summons of plaintiff does it support of contention.

to the'. the to perform service granted,

to CPLR §306-b a summons this is well

granted the "Upon good shown in interest Of justice" (Leader v. NY2d 36

291 [2001]). to attempt FILED: KINGS COUNTY CLERK 11/15/2024 12:53 PM INDEX NO. 520776/2016 NYSCEF DOC. NO. 37 RECEIVED NYSCEF: 11/15/2024

2 of 4 improper and the default be vacated. The plaintiff opposes

the motion to the

Law CPLR states appropriate the plaintiff "may

with the a notice of motion summary judgment

the supporting lieu of a complaint" (id). In Fattarusso v. Levco American Improvement 62 [2d

Dept., 1988] court held that a must be served along

with the notice The court fact "the



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plaintiff by of motion summary judgment in lieu

of complaint does with the jurisdictional that be served" ( . The affidavit of the

server does not indicate the was likewise served

along with the notice motion and the not argue

that Thus, upon the presentation of the documents the motion seeking vacate default for failure

proper is Turning to the cross-motion pursuant seeking to file at juncture, it settled that an extension of time may be where plaintiff establishes

reasons either cause or the

Maroney. Ponzini & Spencer, 97 95, 7 NYS2c:i A plaintiff that fails service at

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[\* 2] all; matter of law, AD3d 852, 835 NYS2d 298 Dept., In

ano ·tvere deferidant. Ili.

service loca,tion

defeli.dantfs residence. fact tll.ere may

regarding number within does the in

(Spath 410, 8Z9 [l"t 2007]). the

that such broader and easier to. satisfy (Mead ..

[3° Dept.~ This

many factors of the of of length the delay, prejudice defendant time took seek the

must be in receive extension the

must demonstrated Chiaro 7 AD3d 746, NYS2d FILED: KINGS COUNTY CLERK 11/15/2024 12:53 PM INDEX NO. 520776/2016 NYSCEF DOC. NO. 37 RECEIVED NYSCEF: 11/15/2024



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3 of 4 as a cannot establish 'good cause' to

effectuate late service (Valentin v. Zaltsman, 39

[2d 2007]) . this case, though, service was attempted efforts undertaken to locate the

fact was effectuated at a which the process server

discovered was the The mere

have been omissions the apartment the affidavit not undermine the fact service was attempted.  
Therefore, element that there was diligence attempting

service was satisfied v. Zach, 36 AD3d NYS2d 19 Dept., Therefore, plaintiff has established good  
cause.

Turning to the interest of justice requirement, it is true

standard is v Singleman, 24 AD3d 1142, 80 NYS2d 783 2005).

standard necessitates a review of including the nature

action, the expiration the statute limitations, the of the to the and the length of it plaintiff to request  
to extend (Leader,

supra) Preliminarily, it pointed out that order to

an based upon interest of justice it is generally true that an attempt at service be (see, v. D'Angelo,  
776 898 [2d Dept., 2004]) .

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[\* 3] CPLR. [15

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r C '1 :-:~ :: :~:....; )> c.i -< r, 9 r- l'"'1 :::0 w ..D FILED: KINGS COUNTY CLERK 11/15/2024 12:53 PM  
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4 of 4 Therefore, an application of the above mentioned principles to



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the facts of this case stand in favor of granting the extension .

First, although the case was initially filed many years ago there

has been no specific delay in seeking the request to effectuate service pursuant to §306-b (State of New York Mortgage Agency

v . Braun, 182 AD3d 63 , 119 NYS2d 522 [2d Dept . , 2020)) . Moreover ,

the defendant has not demonstrated how he would suffered any prejudice by this extension (Bhatara v . Kolaj, 222 AD3d 926 , 203 NYS3d 345 [2d Dept . , 2023 ) ) Moreover , there has not been any

serious dispute as to the potential merits of plaintiff' s cause of

action (see , Lippett v . Education Alliance, 14 AD3d 430 , 789 NYS2d 11 Dept. , 2005]) . Lastly, such extensions may be granted

even if the statute of limitations has expired (Marzan v . Petit-

Frere , 220 AD3d 852 , 198 NYS3d 714 [2d Dept., 2023)) . Therefore ,

based upon all the factors presented, this court grants the

plaintiff an extension of time of ninety days from receipt of this

order in which to serve the defendant (see , Tikvah Enterprises LLC v . Neuman , 80 AD3d 748 , 915 NYS2d 508 [2d Dept., 2011]) . So ordered .

ENTER: ..

DATED : October 10 , 2024 Brooklyn N. Y. Hon. Leon Ruchel sman JSC

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[\* 4]

