

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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GRACE GIBBONS, Official Court Reporter

Plaintiff,

-against-

TRIAL PART: 19
NASSAU COUNTY

INDEX NO: 000675/09

MOTION SEQ. NO: 01

**COURT OFFICERS' BENEVOLENT ASSOCIATION
OF NASSAU COUNTY,
PATRICK CRIBBIN, in his capacity as President of
Court Officer's Benevolent Association of Nassau County,
JOHN CLANCY, in his capacity of First Vice President of
Court Officer's Benevolent Association of Nassau County,
GARY KNOBEL, in his capacity as Nassau County District
Court Judge,
ROBERT CULLEN, individually and in his capacity as
Supervising Court Reporter of Nassau County District Court,
KENNETH ROLL, in his capacity as Chief Clerk of
Nassau County District Court,
MICHAEL BEGANSKAS, in his capacity as Deputy Chief
Clerk of Nassau County District Court,
GEORGE TROVATO, in his capacity as Principle Court
Reporter of Nassau County Supreme Court,
HARRY GREENBERG, personally and in his capacity as
attorney for Court Officers' Benevolent Association of
Nassau County,
GREENBERG, BURZICHELLI GREENBERG, P.C.,
As attorney's for Court Officers' Benevolent Association of
Nassau County,**

SUBMIT DATE: 7/30/09

Defendants.

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The following papers having been read on this motion:

Notice of Motion..... 1
Opposition.....2
Reply.....3

Cribbin in his capacity as President of Court Officers' Benevolent Association of Nassau County and John Clancy in his capacity as First Vice President of COBANC (hereinafter referred to as "defendants") for an order dismissing the complaint for failure to serve a timely complaint within the time prescribed by CPLR §3012(b) is granted.

On January 14, 2009, plaintiff commenced this action by the filing of a summons with notice. On May 14, 2009, service was effectuated upon all of the defendants.

On June 1, 2009, defendants served a notice of appearance and demand for a complaint. On June 8, 2009, plaintiff retained the law office of Steven A. Morelli to represent her in connection with this lawsuit. On or about June 17, 2009, Mr. Morelli's office served a notice of appearance.

On July 9, 2009, defendants served the within motion to dismiss pursuant to CPLR §3012(b). On July 17, 2009, plaintiff served the verified complaint and on July 23, 2009, the affirmation in opposition was served.

Defendants now seek to dismiss the complaint for failure to serve a complaint within the time limited by CPLR §3012(b).

Where a demand for service of a complaint is timely served, the complaint must be served upon defendants within twenty (20) days of receipt of the demand (*see* CPLR §3012[b]). To avoid dismissal for failure to timely respond to the demand, plaintiff must demonstrate a reasonable excuse for the delay in serving the complaint and a meritorious cause of action (*J. Tortorella Swimming Pools, Inc. v Incredible Coatings Corp.*, 35 AD3d 376 [2nd Dept. 2006]; *see Maldonach v Suffolk County*, 23 AD3d 353 [2nd Dept. 2005]; *Gagnon v J.S. Int'l Shipping Corp.*, 8 AD3d 336 [2nd Dept. 2004]). "Further, the service of [a] complaint along with opposition to a motion to dismiss pursuant to CPLR 3012(b) does not cure plaintiff[s'] failure to timely respond to the demand" (*Leviton v Unger*, 2007 WL 6122503 [N.Y. Supreme Court, Nassau County, J. Martin]; *see Brenner v Cross County Shopping Center*, 308 AD2d 469 [2nd Dept. 2003]).

The argument advanced by plaintiff's counsel that "the dilatory tactics engaged in by movant's counsel by not having the courtesy to respond to the request of a newly retained attorney for a brief extension" is not a reasonable excuse for her delay in serving a complaint (*see Brooks v Inn at Saratoga Ass'n*, 188 AD2d 921 [3rd Dept. 1992]).

Moreover, CPLR §3012(d) states that:

(d) Extension of time to appear or plead. Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.

Further, it has been held that "the Courts enjoy a somewhat broader range of discretion when considering a motion for an extension of time under CPLR §2004 which precedes any motion to dismiss than when considering a motion to dismiss pursuant to CPLR §3012 (subd. [b]), whether or not countered by a motion for extension of time" (*A & J Concrete Corp. v Arker*, 54 NY2d 870 [1981]).

Plaintiff has not served a cross-motion seeking an extension of time to serve her complaint (CPLR §2215). Plaintiff inappropriately requests in her opposition papers that this Court compel defendants to accept her answer, without cross-moving for such relief.

In view of the foregoing, the motion is granted and the complaint is dismissed.

This constitutes the decision and order of this Court.

ENTER

DATED: August 25, 2009


ENTERED ON AUGUST 25, 2009
ARTHUR M. DIAMOND

AUG 28 2009 J. S.C.

To:

Attorney for Plaintiff
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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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