

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Frederick P. Bradley v. Robert Rexcoat and Jennifer Rexcoat

2020 NY Slip Op 05374 (N.Y. Ct. App. 2020) · No. 709 CA 19-00892 · Decided October 2, 2020

SUMMARY

The Appellate Division, Fourth Department affirmed an order denying defendants' motion to vacate a prior order extending the time to serve them under CPLR 306-b. The court held that Supreme Court did not abuse its discretion in granting the extension in the interest of justice, noting that defendants' insurer had prompt notice of the accident and that defendants failed to show prejudice from the delayed service.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Peradotto, J.; Lindley, J.; Troutman, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	October 2, 2020
DOCKET	709 CA 19-00892
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, Erie County, denying their motion to vacate a prior order that granted plaintiff an extension of time to serve them with a summons and notice under CPLR 306-b.
STANDARD OF REVIEW	Abuse of discretion; whether Supreme Court abused its discretion in granting an extension of time to serve defendants in the interest of justice.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Robert Rexcoat, Jennifer Rexcoat v. Frederick P. Bradley

TOPICS

- service of process
- appellate procedure
- civil procedure
- statute of limitations
- insurance

PRACTICE AREAS

civil procedure

torts

insurance

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion by granting plaintiff's ex parte motion under CPLR 306-b for an extension of time to serve defendants in the interest of justice.
2. Whether defendants demonstrated prejudice sufficient to warrant vacatur of the prior order extending the time for service.

HOLDINGS

1. Supreme Court did not abuse its discretion in granting plaintiff an extension of time to serve defendants in the interest of justice after weighing the relevant factors.
2. Defendants failed to demonstrate prejudice because their insurer received prompt notice of the accident and had an opportunity to investigate.

KEY QUOTATIONS

*"After weighing the relevant factors, including the "expiration of the [s]tatute of [l]imitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of . . . plaintiff's request for the extension of time, and prejudice to defendant"" ([*1])*

*"Thus, defendants failed to demonstrate that they were prejudiced by the delay in service" ([*1])*

FACTUAL BACKGROUND

Plaintiff sought additional time under CPLR 306-b to serve defendants with a summons and notice. Defendants' insurer received prompt notice of the accident at issue and had an opportunity to investigate. The Appellate Division concluded that defendants failed to demonstrate prejudice from the delay in service.

PROCEDURAL HISTORY

Supreme Court, Erie County, previously granted plaintiff's ex parte motion for an extension of time to serve defendants. The court later denied defendants' motion to vacate that prior order. The Appellate Division affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106 [2001]
- *Moss v Bathurst*, 87 AD3d 1373, 1374 [4th Dept 2011]
- *Przespolewski v Elderwood Health Care at Linwood*, 55 AD3d 1327, 1328 [4th Dept 2008]

- Gabbar v Flatlands Commons, LLC, 150 AD3d 1084, 1085 [2d Dept 2017]
- Terrigino v Village of Brockport, 88 AD3d 1288, 1288 [4th Dept 2011]

OPINION

PER CURIAM.

Bradley v Rexcoat (2020 NY Slip Op 05374) Bradley v Rexcoat 2020 NY Slip Op 05374 Decided on October 2, 2020 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 2, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, TROUTMAN, AND DEJOSEPH, JJ. 709 CA 19-00892 [*1]FREDERICK P. BRADLEY, PLAINTIFF-RESPONDENT, vROBERT REXCOAT AND JENNIFER REXCOAT, DEFENDANTS-APPELLANTS.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (JUSTIN L. HENDRICKS OF COUNSEL), FOR DEFENDANTS-APPELLANTS. VANDETTE PENBERTHY LLP, BUFFALO (JAMES M. VANDETTE OF COUNSEL), FOR PLAINTIFF-RESPONDENT. Appeal from an order of the Supreme Court, Erie County (Dennis Ward, J.), entered March 12, 2019.

The order denied defendants' motion to vacate a prior order entered May 12, 2017 that granted plaintiff's motion seeking an extension of time to serve defendants with plaintiff's summons and notice. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: Defendants appeal from an order that denied their motion seeking to vacate a prior order granting plaintiff's ex parte motion pursuant to CPLR 306-b to extend the time in which to serve them with a summons and notice.

After weighing the relevant factors, including the "expiration of the [s]tatute of [l]imitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of... plaintiff's request for the extension of time, and prejudice to defendant" (Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 105-106 [2001]), we reject defendants' contention that Supreme Court (Dillon, J.) abused its discretion in granting the ex parte motion in the interest of justice (see generally Moss v Bathurst, 87 AD3d 1373, 1374 [4th Dept 2011]).

We note, in particular, that defendants' insurer received prompt notice of the accident at issue and had the opportunity to investigate. Thus, defendants failed to demonstrate that they were prejudiced by the delay in service (see Przespolewski v Elderwood Health Care at Linwood, 55 AD3d 1327, 1328 [4th Dept 2008]; see also Gabbar v Flatlands Commons, LLC, 150 AD3d 1084, 1085 [2d Dept 2017]; see generally Terrigino v Village of Brockport, 88 AD3d 1288, 1288 [4th Dept 2011]).

Entered: October 2, 2020 Mark W. Bennett Clerk of the Court

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