

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ANDRE DEJESUS,

Plaintiff,

-against-

**AFFIRMATION
IN OPPOSITION**

Index No.: 70307/2021E

THE GOVERNING BODY OF JEHOVAH’S WITNESSES,
WATCH TOWER BIBLE AND TRACT SOCIETY OF
PENNSYLVANIA, WATCH TOWER BIBLE AND
TRACT SOCIETY OF NEW YORK, INC., and CRESTON
KINGDOM HALL OF JEHOVAH’S WITNESSES,

Defendants.

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STEPHENIE LANNIGAN BROSS, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the truth of the following, upon information and belief, under the penalty of perjury:

1. I am associated with the law firm of Slater Slater Schulman LLP, attorneys for Plaintiff, ANDRE DEJESUS, in this action, and, as such, I am fully familiar with all the facts, circumstances and prior proceedings in this case, based upon my review of the file maintained by my office.

2. I submit this Affirmation in Opposition to the Motion to Dismiss of Defendant Fordham Spanish Congregation of Jehovah’s Witnesses s/h/a Creston Kingdom Hall of Jehovah’s Witnesses (“Fordham Spanish Congregation”) and in support of Plaintiff’s cross-motion to extend time to effect service upon this defendant.

BACKGROUND FACTS

3. Plaintiff is an adult survivor of childhood sexual abuse who commenced this action pursuant to the Child Victims Act (“CVA”) (*See* CPLR § 214-g and 22 NYCRR 202.72) in connection with sexual abuse that he suffered between 1985 – 1986, when he was approximately 9 – 10 years

old and engaged in recreational, educational and religious activities at and facilitated through Creston Kingdom Hall of Jehovah's Witnesses ("Creston"). Specifically, Plaintiff was abused by a church elder, John "Kenny" or "Kennedy" (plaintiff does not recall the precise name at this time) who used his position as an elder in the congregation to develop a youth organization and baseball team for the infant members of the congregation. Following baseball games, this elder would bring Plaintiff back to the elder's home, where he would abuse Plaintiff, fondling his bare genitals.

4. The instant lawsuit was commenced by filing on August 4, 2021 (*See Exhibit "A,"* Summons & Complaint with Confirmation of Filing).

5. Notwithstanding counsel's contentions in support of Fordham Spanish Congregation's motion, Plaintiff has made multiple efforts to serve Creston.

6. On October 27, 2021, at 9:05 a.m., a process server attempted to serve Creston at 1 Kings Drive in Tuxedo Park, New York. The process server was instructed to wait at the security gate and, then, after some time had elapsed, was told there was no one present to accept service for the entity. A copy of the Affidavit of Attempted Service for this attempt is annexed as **Exhibit "B."**

7. On November 12, 2021 at 9:43 a.m., November 15, 2021 at 3:30 p.m. and November 27, 2021 at 9:41 a.m., service was attempted at the Kingdom Hall located at 216 E. 183rd Street, Bronx, New York. On each occasion, the facility was closed and the property around it was closed with chains. A copy of the Affidavit of Attempted Service for these attempts is annexed as **Exhibit "C."**

8. The address at which the process server attempted service is the only address that was found on the internet, after a diligent search of the New York State Division of Corporations website yielded no information whatsoever. A copy of a screen shot of the page from The Council

of Churches of the City of New York website which identifies the location of Creston Kingdom Hall Jehovah's Witnesses as being 216 E 183rd Street, Bronx, New York is annexed as **Exhibit "D."**

9. Finally, after four unsuccessful attempts to serve Creston personally, a copy of the Summons & Complaint was sent by certified mail on December 2, 2021. A copy of the Certificate of Mailing is annexed as **Exhibit "E."** Also attached as **Exhibit "F"** is a copy of a print out of the United States Postal Service Tracking for the certified mailing to Creston, which indicates that the mailing was delivered to an individual on December 4, 2021.

10. After receiving no response from Creston, the office of the undersigned sent a letter enclosing another copy of the Summons & Complaint to Creston Kingdom Hall of Jehovah's Witnesses at 1 Kings Drive, Tuxedo Park, New York on May 6, 2022. A copy of this letter is annexed as **Exhibit "G."** The apparent response to this mailing was this motion, from an entity previously unknown to Plaintiff's counsel, Fordham Spanish Congregation of Jehovah's Witnesses.

ARGUMENT

PLAINTIFF'S TIME TO SERVE CRESTON KINGDOM HALL OF JEHOVAH'S WITNESSES SHOULD BE EXTENDED IN THE INTEREST OF JUSTICE AND THE MOTION BY FORDHAM SPANISH CONGREGATION DENIED

11. As a preliminary matter, while Fordham Spanish Congregation moves to dismiss this action as against Creston Kingdom Hall of Jehovah's Witnesses, they do so without any explanation or documentation of how the entities are related, or how they came to receive a copy of the Complaint "in the mail on March 11, 2022." (Fordham Spanish Congregation MOL at p. 5). A review of Plaintiff's file maintained by the office of the undersigned does not reflect anything being mailed to Creston in March 2022.

12. Indeed, without explaining the relationship between Creston and Fordham Spanish Congregation, defense counsel simply states, at paragraph 1 of her Affirmation, that Fordham Spanish Congregation was “improperly named as Creston Kingdom Hall of Jehovah’s Witnesses.” Yet, at paragraph 8 of the same Affirmation, counsel states that “(t)he Congregation is not even a defendant in this case.” (Affirmation in Support of Margaret T. Korgul at ¶¶ 1, 8). The logical inconsistency of these statements is emblematic of the difficulty that Plaintiff has experienced in serving Creston.

13. As set forth above, Plaintiff attempted personal service of Creston on four (4) separate occasions. On the one occasion that contact was made with a person, albeit via intercom, the process server was informed that there was no one at the Tuxedo Park address to accept service for the entity. *See*, Exhibit “B.” On the three occasions that personal service was attempted at the Bronx address, the building was locked and chained shut. Plaintiff’s subsequent service by mail was apparently received, as averred by counsel for Fordham Spanish Congregation.

14. In the event that the Court finds Plaintiff’s service of Creston to be insufficient, Plaintiff respectfully requests additional time be granted to effect service on this defendant.

15. CPLR 306-b provides in relevant part “(i)f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, *or upon good cause shown or in the interest of justice, extend the time for service.*” (Emphasis added). Here, Plaintiff respectfully seeks an extension of time to serve his complaint in the interest of justice.

16. Plaintiff’s action was timely filed on August 4, 2021. The statute of limitations for CVA actions subsequently expired on August 14, 2021. Unless plaintiff is allowed a *nunc pro tunc* extension of time to serve the complaint, he will be left without any remedy at all for the injuries that he sustained as a victim of child sexual abuse.

17. The expiration of the Statute of Limitations has frequently been considered by courts as a factor favoring an application for an extension of time to effectuate service pursuant to CPLR § 306-b, because, if the application isn't granted, an injured party is left with no recourse. *Beauge v. New York City Tr. Auth.*, 282 AD2d 416 [2nd Dept 2001]. Moreover, losing the procedural advantage of the expiration of the statute of limitations has been found to not constitute prejudice to defendants. *Busler v. Corbett*, 259 AD2d 13 [4th Dept 1999].

18. An extension of time for service is a matter within the court's discretion. *Leader v. Maroney*, 97 NY2d 95, 101 [2001]. The Court of Appeals held in *Leader* that, in considering a request for an extension of time under the interest of justice standard, "the court may consider diligence . . . along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time and prejudice to the defendant." 97 NY2d at 105-106. The trial court's analysis thus involves weighing multiple factors, in what has been described as a "calculus." *Cellino & Barnes v. Rzepka*, 2016 N.Y.Misc. LEXIS 9188 [Sup. Ct. Erie County], citing *Moss v. Bathurst*, 87 AD3d 1373, [4th Dept. 2011] ("After weighing the relevant factors . . . and noting that no one factor is more important than the others, we reject defendant's contention that Supreme Court abused its discretion in denying her motion and granting plaintiff's cross motion.").

19. In this case, counsel admits that Creston or its apparent successor in interest, Fordham Spanish Congregation, has been on notice of this matter since no later than March 11, 2022. Given that Plaintiff's process server mailed a copy of the Summons and Complaint to Creston on December 2, 2021 and this piece of certified mail was delivered on December 4, 2021, it is likely that a copy was received even earlier than the date referenced by counsel. In either event, the delay in service of Plaintiff's Complaint will not prejudice defendant's defense of this

case but will only have the positive effect of allowing Plaintiff to pursue a legal remedy for the injuries inflicted upon him by his abuser.

20. Additionally, no such discovery has begun as it relates to Creston supporting a lack of prejudice.

21. Lastly, Fordham Spanish Congregation argues its due process rights would be violated if it were required to litigate the action as “more than a generation has passed since the events in question.” (Fordham Spanish Congregation MOL at p. 16). Here, Fordham Spanish Congregation conflates the issue of service of process with the constitutionality of the CVA. To the extent Fordham Spanish Congregation is arguing the CVA to be unconstitutional, numerous courts presiding over these claims have ruled the CVA to be constitutional and a reasonable remedy for decades of injustice to claimants such as Plaintiff.

22. For all of the foregoing reasons, it is respectfully requested that Fordham Spanish Congregation’s motion be denied and Plaintiff’s cross-motion be granted in its entirety, together with such other, further and different relief as this court deems appropriate.

WHEREFORE, Plaintiff respectfully requests that his cross-motion be granted in its entirety, together with such other, further and different relief as this Court deems appropriate.

Dated: Melville, New York
July 25, 2022

Respectfully submitted,

/s/Stephenie Lannigan Bross
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