

**Lorie v Joseph Christopher for Beauty & Wellness, Inc.**

2010 NY Slip Op 30818(U)

March 17, 2010

Supreme Court, Nassau County

Docket Number: 17783-09

Judge: F. Dana Winslow

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SCAN

**SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK**

**Present:**  
**HON. F. DANA WINSLOW,**  
**Justice**

**TRIAL/IAS, PART 5**

**JANET LORIE,**

**Plaintiff,**

**MOTION DATE: 1/11/09  
MOTION SEQ. NO.: 001**

**-against-**

**INDEX NO.: 17783/09**

**JOSEPH CHRISTOPHER FOR BEAUTY AND WELLNESS, INC., JOSEPH CHRISTOPHER SALON SPA FOR BEAUTY AND WELLNESS, JOSEPH CHRISTOPHER HAIR DESIGN, LTD., JOSEPH CHRISTOPHER SALON AND SPA FOR BEAUTY AND WELLNESS, LTD., and JOSEPH INZONE,**

**Defendants.**

**The following papers read on this motion (numbered 1):**

**Notice of Motion.....1**

In this personal injury action, plaintiff moves for a default judgment against all defendants pursuant to **CPLR §3215**.

This action arises out of an incident which allegedly occurred on November 19, 2006 (the "Incident") on premises owned, occupied and/or operated by defendants, in which plaintiff claims she sustained first degree burns to her face as a result of the negligent application of a waxing treatment.

In support of her motion for a default judgment, plaintiff submits (i) copies of the Summons and Verified Complaint (the "Complaint") verified by her attorney; (iii) Affidavits of Service, attesting to service on the corporate defendants by delivery to the "managing agent" or person "authorized to accept," and upon the individual defendant by delivery to a "co-tenant"; (ii) the Affidavit of Merit, sworn to by plaintiff on December 8,

2009 (“Plaintiff’s Affidavit”); and the Affirmation of Counsel (“Affirmation”) as to the failure of the defendants to answer or otherwise appear in this action.

Although plaintiff’s application nominally meets the evidentiary requirements of **CPLR §3215(f)**, the Court cannot grant the relief sought. Close scrutiny of the application reveals defects and inconsistencies which call into question this Court’s jurisdiction over several, if not all, of the defendants.

First, the Court considers the address used for service of process. Plaintiff states that all of the Corporate Defendants were “served with process personally at defendant’s last known addresses and principal places of businesses pursuant to the service provisions of the CPLR and section 306 of the BCL of the State of New York.” Affirmation, ¶¶ 5-6. Plaintiff states that “INZONE was served with process pursuant to section 3215 of the CPLR.” Affirmation ¶ 7.

The Court notes, at the outset, the inaccuracy of the above statements. Service pursuant to Section 306 of the Business Corporation Law is made by delivery to the Secretary of State. **BLC §§ 306(b)(1)**. Plaintiff has submitted no Affidavit of Service attesting to such delivery. Service upon an individual is made pursuant to **CPLR §308**, not **§3215**.

More significantly, the Court notes that all defendants were served at the same address. The Affidavits of Service upon JOSEPH CHRISTOPHER FOR BEAUTY AND WELLNESS, INC. (“BEAUTY & WELLNESS”), JOSEPH CHRISTOPHER SALON SPA FOR BEAUTY AND WELLNESS (“SALON”), JOSEPH CHRISTOPHER HAIR DESIGN, LTD. (HAIR DESIGN”), and JOSEPH CHRISTOPHER SALON AND SPA FOR BEAUTY AND WELLNESS, LTD. (“SPA”) (collectively, the “Corporate Defendants”) indicate that all of the Corporate Defendants were served at 254 W Park Avenue, Long Beach NY 11561 (“254 W Park”). The Affidavit of Service upon JOSEPH INZONE (“INZONE”) indicates that INZONE was also served at 254 W Park.

With respect to the Corporate Defendants, the implication that 254 W Park is the principal place of business for all of the Corporate Defendants is inconsistent with other evidence in the record. 254 W Park is not the address listed for every Corporate Defendant on the Summons. Only one defendant (SALON) is listed at 254 W Park. The other defendants are purportedly located at 309 W Park (BEAUTY & WELLNESS), 304 W Park (HAIR DESIGN), and 10 West Broadway (SPA). 254 W Park is also not the address listed for every Corporate Defendant on the “Notice Pursuant to BCL 306,” which was purportedly served pursuant to **BCL 306(b)(1)** and **CPLR 3215(g)**. [Motion Exh.5] 254 W Park is not even the address at which the Incident allegedly occurred.

According to the Complaint, the Incident occurred at 2750 Merrick Road, Bellmore, New York. According to Plaintiff's Affidavit, it occurred at 250 Merrick Road, Bellmore, New York. The Court cannot discern whether this is a typographical error or another discrepancy.

With respect to INZONE, 254 W Park is designated as his "last known residence, usual place of abode." [Motion Exh.4] The proposition that INZONE resides at the same address as the principal place of business of every Corporate Defendant is suspect in itself, but particularly insofar as the address differs from the address designated for INZONE on the Summons. On the Summons, INZONE's address is listed as 304 W Park, which is the same address designated for HAIR DESIGN.

Plaintiff does not explain any of the above inconsistencies, nor offer any precise reason for using 254 W Park as the address for service upon all of the parties. In view of the close similarity of the names of the Corporate Defendants, the Court suspects that plaintiff is unsure of the correct corporate name and address of the intended business entity or entities. The Court's own search of the New York Department of State corporate database revealed that at least two of the Corporate Defendants were inactive at the time of the Incident. In any event, however, the Court is unable to determine whether any of the defendants, to the extent that they are proper parties, were served at the proper address.

Second, the Court considers the person to whom delivery of process was made. The uncertainty regarding the service address is compounded by the fact that none of the persons to whom the papers were delivered is sufficiently identified. According to the Affidavits of Service, the Summons and Complaint were served upon BEAUTY & WELLNESS, SALON, AND HAIR DESIGN by delivery to "EMMA (SMITH), MANAGING AGENT WHO REFUSED LAST NAME." Emma (Smith) was described as a 30 year old white female with brown hair, 5'4" tall and 130 lbs. The Summons and Complaint were served upon SPA by delivery to "DONNA (SMITH) AUTHORIZED TO ACCEPT WHO REFUSED LAST NAME," described as a 40 year old white female with brown hair, 5'4" tall and 120 lbs. Service upon INZONE was made by delivery to "(JANE SMITH), CO-TENANT WHO REFUSED NAME", described as a 30 year old white female with blond hair, 5'4" tall and 120 lbs.

Service upon a corporation pursuant to **CPLR §311** must be made by delivery to "an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service." **CPLR §311(a)**. This does not include "any corporate employee who has been left to mind an office in the absence of superior corporate Officials." **Colbert v. International Security Bureau**

Inc., 79 A.D.2d 448. See also **Daniels v. King Chicken & Stuff, Inc.**, 35 A.D.3d 345, 346. (Plaintiff must demonstrate that the manager's position called for "judgment and discretion" sufficient to make the manager a "managing agent" within the meaning of CPLR 311(a) (1)). Service upon an individual pursuant to **CPLR §308(2)** requires only that the recipient be a person of suitable age and discretion at the defendant's actual dwelling or place of business.

In this case, the Affidavits of Service designate recipients without full names. Their descriptions are as vague as they are general. At worst, these defects are the hallmarks of "junk service." At best, they deprive the Court of information necessary to confirm the recipients' status as managing or authorized agents of the Corporate Defendants, and cast doubt upon the nature and validity of the service upon INZONE. Particularly insofar as INZONE's residence address may have been confused with his business address, the lack of a name or specific relationship identifying the recipient provokes the question of whether service was made to a household member at INZONE's home address, a co-worker at his business address, or neither.

The Court does not find that any of the misstatements, defects, inconsistencies or insufficiencies is fatal in itself. Viewed together, however, they reflect an unreliable application, rife with indications that the Summons and Complaint may not have been properly served. The Court will not grant a default judgment founded upon cursory investigation and careless proof.

Accordingly, it is

**ORDERED**, that plaintiff's application for a default judgment pursuant to **CPLR §3215** is **denied**.

Dated: 3/17/10

*[Signature]*  
J.S.C.

**ENTERED**  
APR 06 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE