

STATE OF MICHIGAN
COURT OF APPEALS

DENISE PALMER,

Plaintiff-Appellant,

v

ASTA CREDIT CORPORATION,

Defendant-Appellee,

and

METRO MANOR,

Defendant.

UNPUBLISHED

June 27, 1997

No. 179880

Wayne Circuit Court

LC No. 94-410955-NO

DENISE PALMER,

Plaintiff-Appellant,

v

ASTA CREDIT CORPORATION,

Defendant-Appellee,

and

METRO MANOR,

Defendant.

No. 183210

Wayne Circuit Court

LC No. 94-420157-NO

Before: White, P.J., and Cavanagh and J. B. Bruff*, JJ.

PER CURIAM.

In docket no. 179880, plaintiff appeals the circuit court's order dismissing her negligence claim without prejudice, following the circuit court's denial of her petitions for issuance of second summons, MCR 2.102(D), and for service by alternate means, MCR 2.105(I). In docket no. 183210, plaintiff appeals the circuit court's order granting summary disposition to defendant on statute of limitations grounds. We reverse.

As required by MCR 2.102(D), plaintiff presented a petition for issuance of second summons to the circuit court on June 30, 1994, within ninety one days after filing her complaint on March 31, 1994. Plaintiff supported the petition with an eighteen paragraph affidavit of plaintiff's counsel setting forth in detail the extensive efforts counsel made to serve the original summons. The affidavit stated that plaintiff retained counsel's law firm in October 1992 to investigate a possible premises liability cause of action as a result of an injury plaintiff sustained in April 1991. The affidavit further stated that plaintiff informed counsel that the premises were located in the City of Detroit and owned by Metro Manor, and that in November 1992, June 1993, and October 1993, the law firm tendered plaintiff's claim to Metro Manor, but no response was forthcoming. The affidavit stated that in February 1994, on inquiry of the City of Detroit Finance Department, Assessments Division, the property's taxpayer was discovered to be Asta Credit Corporation, of Englewood Cliffs, New Jersey. In March 1994, counsel forwarded to the New Jersey address a notice of intent to file suit, but no response was received. Also in March 1994, counsel confirmed with the Wayne County Register of Deeds that Asta Credit Corporation had owned the property in February 1991. The affidavit stated that counsel inquired of the State of Michigan and determined that Asta was not qualified to do business in the State of Michigan. The affidavit further stated that plaintiff filed suit against Asta and Metro Manor on March 31, 1994. On April 9, 1994, counsel inquired of the State of New York regarding Asta's status and was advised that Asta Credit Corporation had changed its name in 1983 to Asta Group, Inc., that the corporation did not maintain a resident agent, and that all mail intended for the corporation should be forwarded to Benjamin J. Pomerance, on Broadway in New York city. Plaintiff's counsel forwarded the summons and complaint to the New York City Sheriff on April 18, 1994, and on April 21, 1994, sent by certified mail the summons and complaint to Asta, in care of Mr. Pomerance. The affidavit stated that on or about May 10, 1994, counsel received the certified letter, returned by the postal service and marked "moved, left no address." On June 3, 1994, counsel received the New York City Sheriff's return indicating that defendant was not known at the Broadway address in New York. In June 1994, plaintiff's counsel contacted New York City directory assistance for phone numbers for "Asta Group," was given a number, and upon calling, was told that Asta Group was located at an address on Madison Avenue in New York. On June 22, 1994, plaintiff's counsel retained a process serving company in New York City to attempt service at the Madison Avenue address. On June 29, 1994, the process serving company advised plaintiff's counsel that the tenant at the Madison Avenue address was not defendant, but an unrelated company known as "Astor Group." Finally, the affidavit stated that "[f]or

* Circuit judge, sitting on the Court of Appeals by assignment.

the foregoing reasons, service of process on defendant Asta Credit Corp. was not obtained as of June 30, 1994.” The circuit court’s order denying plaintiff’s petition states no reason and there is no indication in the record that a hearing was held.

Michigan Court Rules Practice states in pertinent part:

Common sense, the realities of legal practice, and MCR 1.105, see Authors’ Comment, that rule, all dictate that, under ordinary circumstances, a party’s request that a second summons issue should be granted by the court on only a minimal showing of good cause, and that the court should focus its discretion more on the question of what will be the expiration date of the second summons. [1 Martin, Dean & Webster, Michigan Court Rules Practice, 1996 pocket part, p 28.]

We conclude that plaintiff’s counsel’s affidavit established good cause and that the circuit court abused its discretion in denying plaintiff’s petitions for issuance of second summons and service by alternative means. Further, we reject defendant’s argument that plaintiff was required to have both filed her complaint and either served defendant or made immediate arrangements for service no later than April 1, 1994, when the period of limitations expired. When a complaint is filed before the applicable statute of limitations expires, as was the case here, service of process may take place any time within the life of the summons or properly extended summons, as provided in MCR 2.102(D). See *Busciano v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971).

We therefore reverse the circuit court’s denial of these petitions, vacate the circuit court’s order dismissing plaintiff’s complaint without prejudice, and remand for further proceedings. In light of our disposition, plaintiff’s consolidated appeal in docket no. 183210 is moot.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Mark J. Cavangh
/s/ John B. Bruff