

DOCKET NO. HHD CV-16-6071062 S : SUPERIOR COURT
PERTEF BYLYKBASHI : J. D. OF HARTFORD
VS. : AT HARTFORD
PUBLIC SERVICE INSURANCE COMPANY, ET AL : JUNE 3, 2019

MEMORANDUM OF DECISION ON
MOTION TO DISMISS (#144)

This matter is before the court concerning the defendant Public Service Insurance Company's (PSI) motion to dismiss, which appeared as a take papers matter on the short calendar for May 28, 2019. The plaintiff, Pertef Bylybashi, filed an objection to the motion to dismiss (#147). After consideration, the court issues this decision.

In its motion, PSI asserts that the court previously granted its motion for the entry of a nonsuit (#130), but the docket erroneously states that judgment was entered in part and the case remains pending, and still reflects that a trial management conference is scheduled for September 8, 2020 and trial on September 15, 2020. PSI seeks a judgment of dismissal, removal of the case from the court's docket, and vacatur of all dates pending on the docket.

The court's docket reflects that, in January 2018, nonsuits were entered against the plaintiff as to his claims against both the defendants in this matter. By motion dated November 29, 2017, PSI sought the entry of a nonsuit for failure to produce documents and failure to comply with court orders. The court (*Robaina, J.*) granted that motion by order dated January 18, 2018 (#130.86) and entered a nonsuit. Similarly, defendant Thomas M. Burgess & Co., Inc. filed a motion for entry of nonsuit (#131) on December 6, 2017, which was also granted by the court (*Robaina, J.*) on January 18, 2018 (#131.86).

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The plaintiff does not challenge the court's previous orders entering nonsuits. Rather, he argues that the nonsuit as to PSI should be set aside since he has belatedly complied with its discovery request. He filed a motion to open nonsuit (#145), which raises the same arguments as set forth in his objection to the motion to dismiss (#147).

"A nonsuit not based on the insufficiency of the evidence is a final judgment from which an appeal lies." *Jaquith v. Revson*, 159 Conn. 427, 430, 270 A.2d 559 (1970). "Generally speaking, a nonsuit is the name of a judgment rendered against a party in a legal proceeding upon his inability to maintain his cause in court, or when he is in default in prosecuting his suit or in complying with orders of the court. . . . When the plaintiff is nonsuited, [t]he judgment entered [is] one entitled *as of nonsuit* A nonsuit, therefore, is a judgment expressed without more, and to be entered when ordered without more." (Emphasis in original; internal quotation marks omitted.) *Misata v. Con-Way Transportation Services, Inc.*, 106 Conn. App. 736, 739 n.3, 943 A.2d 537 (2008). The nonsuits ordered by the court were judgments which were effective when issued on January 18, 2018.

"Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment . . . rendered in the superior court may not be opened . . . unless a motion to open . . . is filed within four months succeeding the date on which it was rendered or passed. . . . Unless the parties waive this time limitation, the trial court lacks jurisdiction to entertain a motion to open filed more than four months after a decision is rendered." (Citations omitted; internal quotation marks omitted.) *G.F. Const., Inc. v. Cherry Hill Const., Inc.*, 42 Conn. App. 119, 123–24, 679 A.2d 32 (1996). There, "[t]he plaintiff did not file the necessary affidavits with the motion to open the nonsuit in a timely manner.

Therefore, the motion was not proper, and the trial court was without jurisdiction to grant it.”

Id., 124.

Here, the plaintiff’s motion to open was not filed within four months of the entry of the nonsuits. Instead, it was filed over sixteen months later.

In addition to lacking jurisdiction to open the nonsuits due to the untimeliness of the motion to open, “[t]he power of the court to set aside a judgment of nonsuit is governed by General Statutes § 52-212¹. . . . To obtain relief, a plaintiff must establish both ‘that a good cause of action, the nature of which must be set forth, existed when the judgment of nonsuit was rendered, and that the plaintiff was prevented from prosecuting it because of mistake, accident or other reasonable cause.’ *Biro v. Hill*, 231 Conn. 462, 467, 650 A.2d 541 (1994); see also Practice Book § 17-43 (a).” (Footnote omitted.) *Moore v. Brancard*, 89 Conn. App. 129, 132, 872 A.2d 909 (2005).

“Since the conjunctive ‘and’ meaning ‘in addition to’ is employed between the parts of the two-prong test, both tests must be met.” (Internal quotation marks omitted.) *Berzins v. Berzins*, 105 Conn. App. 648, 654, 938 A.2d 1281, cert. denied, 289 Conn. 932, 958 A.2d 156

¹Section 52-212 (a) provides, in relevant part: “(a) Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which it was rendered or passed, and the case reinstated on the docket . . . , upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense.

(b) The complaint or written motion shall be verified by the oath of the complainant or his attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or defendant failed to appear.”

(2008); see *Flater v. Grace*, 291 Conn. 410, 419, 969 A.2d 157 (2009) (§ 52-212 (a) sets forth two requirements). Practice Book § 17-43 (a)² contains similar terms. If a movant fails to satisfy one prong of the test, the court need not determine whether the other has been met. See *Berzins v. Berzins*, supra, 105 Conn. App. 653-54; General Statutes § 52-212 (a).

“The first prerequisite to the granting of a motion to open a judgment is a showing that a good cause of action existed. ‘The moving party on a motion to open must not only ‘allege,’ but also make a ‘showing’ sufficient to satisfy the two-pronged test of § 52-212. . . .’ (Citations omitted.) *Eastern Elevator Co. v. Scalzi*, 193 Conn. 128, 133-34, 474 A.2d 456 (1984). A bald assertion that one existed is inadequate.” *Moore v. Brancard*, supra, 89 Conn. App. 132. See *Pantlin & Chananie Dev. Corp. v. Hartford Cement & Bldg. Supply Co.*, 196 Conn. 233, 241, 492 A.2d 159 (1985), where, although the movant presented a motion and affidavit, a deficiency remained as to the first part of the test because the defendant did not offer any evidence showing that a good defense existed. “Consequently, the trial court could make no finding as to the validity of the defense.” *Id.*

In addition to its untimeliness, the plaintiff’s motion to open the nonsuit does not comply with General Statutes § 52-212 (b)’s requirement of a verification under oath. Here, the plaintiff has made no showing that a good cause of action existed. The court has no basis on which to

²Section 17-43 (a) provides, in relevant part, “Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant’s attorney. . . .”

make a finding as to the validity of the cause of action.


Where a plaintiff has “not fulfilled the statutory prerequisites for setting aside a nonsuit, the trial court . . . ha[s] no authority to set aside the nonsuit.” *Jaconski v. AMF, Inc.*, 208 Conn. 230, 238, 543 A.2d 728 (1988).

CONCLUSION

1. Since the nonsuits ordered by the court were judgments which were effective when issued on January 18, 2018, and more than four months have passed, the court lacks jurisdiction to open those judgments or to issue a new judgment of dismissal, which is not required.

2. Since those judgments concluded this matter, the Clerk is directed to remove the case from the court’s trial docket, and to cancel the scheduled dates for the trial management conference and for trial.

BY THE COURT



ROBERT B. SHAPIRO
JUDGE TRIAL REFEREE

Checklist for Clerk

Docket Number: HHDCV16-6071062S

Case Name: Bylykbashi v. Public

Memorandum of Decision dated: 6/3/19

File Sealed: Yes No X

Memo Sealed: Yes No X

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Superior Court Case Look-up
 Civil/Family
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☑ HHD-CV16-6071062-S BYLYKBASHI, PERTEF v. PUBLIC SERVICE INSURANCE COMPANY Et Al
 Prefix: NB1 Case Type: C20 File Date: 07/11/2016 Return Date: 07/26/2016

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help
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Case Look-up
 By Party Name
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Information Updated as of: 06/03/2019

Case Information

Case Type: C20 - Contracts - Insurance Policy
 Court Location: HARTFORD JD
 List Type: JURY (JY)
 Trial List Claim: 09/08/2017
 Last Action Date: 05/28/2019 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
 Disposition:
 Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party	Category
P-01 PERTEF BYLYKBASHI Attorney: ☑ ROBERT F COHEN (010120) 580 BROAD STREET SUITE 101 BRISTOL, CT 060106678 File Date: 07/11/2016		Plaintiff
D-01 PUBLIC SERVICE INSURANCE COMPANY Attorney: ☑ JODI SHAWN TESSER (420023) ONE NEW YORK PLAZA 44TH FLOOR NEW YORK, NY 10004 File Date: 07/19/2016		Defendant
	Attorney: ☑ SANJIT SHAH (436061) ONE NEW YORK PLAZA 44TH FLOOR NEW YORK, NY 100041901 File Date: 03/14/2019	
D-02 THOMAS M. BURGESS & CO. INC. Attorney: ☑ KEIDEL WELDON AND CUNNINGHAM LLP (428809) 190 OLD RIDGEFIELD ROAD WILTON, CT 06897 File Date: 07/13/2016		Defendant

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