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To Estop or Not to Estop: Second Department Examines Impact on Proper Service of the Failure to Update A Home Address With the DMV

Under New York law, you must update your address with the New York State Department of Motor Vehicles ("DMV") within 10 days of moving to a new residence. This rule not only ensures that you receive mail related to driving privileges and vehicle registrations but also that you can be served with process and do not fall victim to a default judgment. But what happens if you fail to update your address in a timely manner and, as a result, you do not receive notice of a lawsuit against you? Does that failure estop you from contesting the validity of the service? The Second Department recently analyzed this question and offered a useful clarification of its precedent for practitioners.

The Case: *Castillo-Florez v Charlecius*, 2023 N.Y. Slip. Op. 05470 (2d Dept. 2023)

In *Castillo-Florez*, the plaintiff sued for personal injuries he suffered when a bus operated by the defendant struck him in Queens. The defendant was allegedly served at an address in Farmingdale, New York, which was the address the defendant maintained on file with the DMV. When the defendant failed to answer, the plaintiff moved for a default judgment, relying on the address of record with the DMV to establish the defendant was properly served. When the defendant became aware of the lawsuit, he opposed the motion for default judgment, arguing that he was not properly served because he did not reside at the Farmingdale address at the time of the alleged service. In reply, the plaintiff asserted that the defendant was estopped from challenging service because he failed to update his address with the DMV as required by Vehicle and Traffic Law ("VTL") § 505(5). The trial court agreed with the plaintiff, holding that the defendant's failure to update his address with the DMV as required by VTL § 505(5) precluded a challenge to the process server's diligence.

On appeal, the Second Department reversed the trial court's decision. The court acknowledged that conflicting jurisprudence had developed in the department on the issue of estoppel for violations of VTL § 505(5), with some cases holding estoppel was mandatory and others taking a more nuanced approach. To address this confusion, the appellate panel clarified that "the failure to update one's address, by itself, should not equate with affirmative or deliberate conduct designed to avoid service, even when coupled with a defendant's direct involvement in an accident." Rather, the applicability of estoppel depends on "the facts and circumstances of the particular case, and certain cases may require a hearing to determine whether estoppel is warranted."

By way of illustration, the court pointed to the correct application of estoppel in *Wauchope v Williams* (71 AD3d 876 (2d Dept. 2010) and *Velasquez v Gallelli* (44 AD3d 934 (2d Dept. 2007), cases in which both defendants engaged in deliberate behavior in an attempt to avoid service. In *Castillo-Florez*, in contrast, the Second Department ruled that no deliberate conduct had been identified in the record. The court, therefore, reversed the trial court's ruling and remanded the case for a hearing to determine whether the defendant had been properly served.

Takeaway

Litigators attempting to defeat a default judgment must always first examine whether service was proper. If a change of address is at issue, the failure to update an address with the DMV will not necessarily estop the client from contesting service—as long as the failure was not deliberate. But to all the New York residents: It's better to be safe than sorry. Update your address with the DMV promptly after moving.