

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D35453  
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Submitted - May 23, 2012

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

2011-08880

DECISION & ORDER

Maria Moundrakis, respondent, v John Dellis, appellant.

(Index No. 700007/10)

Borchert, Genovesi & LaSpina, P.C., Whitestone, N.Y. (Anthony J. Genovesi, Jr., of counsel), for appellant.

Ginsburg & Misk, Queens Village, N.Y. (Gerard N. Misk of counsel), for respondent.

In an action, inter alia, to recover damages for assault, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Strauss, J.), dated July 19, 2011, as granted the plaintiff's motion pursuant to CPLR 306-b to extend the time to serve the defendant with a summons and complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

A motion pursuant to CPLR 306-b to extend the time for service of a summons and complaint may be granted upon "good cause shown or in the interest of justice" (CPLR 306-b; *see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-105). The plaintiff failed to demonstrate that she exercised reasonably diligent efforts in attempting to effect proper service of process upon the defendant and, thus, did not establish "good cause" (CPLR 306-b; *see Leader v Maroney, Ponzini & Spencer*, 97 NY2d at 104; *Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 32; *Kazimierski v New York Univ.*, 18 AD3d 820; *Busler v Corbett*, 259 AD2d 13, 15). Nevertheless, the Supreme Court providently exercised its discretion in granting the plaintiff's motion "in the interest of justice" (CPLR 306-b). In deciding whether to grant an extension of time to serve a summons and complaint in the interest of justice, "the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute

June 27, 2012

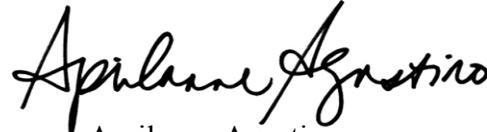
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of Limitations, the [potentially] meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d at 105-106; see *Thompson v City of New York*, 89 AD3d 1011, 1012; *Bumpus v New York City Tr. Auth.*, 66 AD3d at 32). Here, the plaintiff moved promptly for an extension after the defendant challenged the service on the ground that it was defective (see *DiBuono v Abbey, LLC*, 71 AD3d 720; *Bumpus v New York City Tr. Auth.*, 66 AD3d at 37). Furthermore, the statute of limitations had expired at the time the plaintiff made her motion, there was evidence of a potentially meritorious cause of action, and there was no demonstrable prejudice to the defendant (see *Thompson v City of New York*, 89 AD3d at 1012; *DiBuono v Abbey, LLC*, 71 AD3d 720; *Rosenzweig v 600 N. St., LLC*, 35 AD3d 705, 706).

SKELOS, J.P., DICKERSON, HALL, ROMAN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court