

<b>Press v EPDJR NYC, LLC</b>
2021 NY Slip Op 31107(U)
April 7, 2021
Supreme Court, New York County
Docket Number: 151916/2019
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. W. FRANCO PERRY**  
*Justice*

**PART IAS MOTION 23EFM**

DEBORAH PRESS, as the Mother of Kyle Press  
and Administratrix of the Estate of Kyle Press,  
and JEFFREY PRESS, as father of Kyle Press,

Plaintiffs,

- v -

EPDJR NYC, LLC D/B/A RPM PRESENTS, PARADOCS  
WORLDWIDE INC., FIRST RESPONSE AMBULANCE, INC.

Defendant.

**DECISION + ORDER ON  
MOTION**

INDEX NO. 151916/2019  
MOTION DATE 02/03/2021  
MOTION SEQ. NO. 002

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for DISMISS

In this wrongful death action, plaintiffs allege that the death of their son, Kyle Press on the evening of June 18, 2017 was caused by the negligence, carelessness and deviation from the standard of care by defendants, including Paradocs Worldwide Inc. ("Paradocs"). In motion sequence number 002, defendant Paradocs seeks an order dismissing the amended complaint based upon improper service pursuant to CPLR § 3211, §3211(a)(8), §3211(e) and §311. Plaintiffs oppose the motion, providing proof that defendant Paradocs was served through the Secretary of State.

**BACKGROUND**

Plaintiffs allege that on June 18, 2017 at a concert promoted and organized by co-defendant EPDJR NYC, LLC d/b/a RPM Presents, located on Governor's Island, the deceased plaintiff went into arrest and subsequently died. It is alleged that defendant Paradocs provided medical services for the event. (NYSCEF Doc. No. 4). In seeking dismissal of the amended

complaint, defendant Paradocs contends that plaintiffs failed to effect service of process in accordance with CPLR §311 (a) (1) and Business Corporation Law §§305 and 306 because service of process was made upon a corporate officer's relative who has no relationship to the defendant corporation. In addition, defendant Paradocs maintains that it did not designate an agent for service of process. (NYSCEF Doc. No. 30). Paradocs served its answer to the amended complaint on July 3, 2019, asserting affirmative defenses of lack of personal jurisdiction and improper service and within sixty days of service of its answer, filed the instant motion to dismiss. (NYSCEF Doc. Nos. 24, 29).

Plaintiffs had initially commenced this action against defendant EPDJR, on February 21, 2019 and amended the complaint naming Paradocs and First Response Ambulance, Inc., as additional defendants on June 7, 2019. (NYSCEF Doc. No. 13). Prior to amending the complaint adding Paradocs as an additional defendant, plaintiffs had served a subpoena on Paradocs at an address that was different than the address Paradocs provided to the Secretary of State. (NYSCEF Doc. No. 46).

Plaintiffs oppose the motion and assert that Paradocs was served on June 14, 2019, by personal service on Emanuel Pourell, an individual who was authorized to accept service on behalf of Paradocs, at the address listed on the NYS Department of State, Division of Corporations' website. (NYSCEF Doc. Nos. 40, 41). Plaintiffs thereafter, on August 21, 2019, having received defendant's motion to dismiss and being advised that Paradocs had a new address, again caused the summons and amended complaint to be served on Paradocs at 550 Vanderbilt Avenue, Suite 722, Brooklyn, New York, the same address the discovery subpoena had previously been served upon Paradocs, but the owner had refused to accept service. (NYSCEF Doc. No. 46, ¶ 5). As such, plaintiffs then caused the summons and amended

complaint to be personally served on the Secretary of State in accordance with Business Corporation Law § 306, on August 21, 2019, and maintain that because Paradocs was served within 120 days of filing the amended complaint, the motion must be denied. (NYSCEF Doc. No. 45).

#### STANDARD OF REVIEW/ANALYSIS

CPLR § 3211 (a) (8) provides that, "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the court has no jurisdiction of the person of the defendant . . ."

CPLR 306-b provides that a plaintiff must serve the summons and complaint within 120 days after commencement of an action. An action is commenced when the pleadings are filed with the court (CPLR 304). The court may dismiss an action without prejudice for lack of personal jurisdiction if the plaintiff fails to serve the pleadings within 120 days (CPLR 3211 [a] [8]). The court may extend the plaintiff's time for service of the pleadings for good cause shown or in the interest of justice, if the plaintiff fails to serve the pleadings within 120 days (CPLR 306-b).

A "good cause" extension requires a showing of reasonable diligence in trying to effect proper service upon a defendant within 120 days of the summons and complaint. (*Henneberry v. Borstein*, 91 A.D.3d 493, 496, 937 N.Y.S.2d 177 [1st Dept 2012]).

An extension "in the interest of justice" is broader and more flexible than a "good cause" extension and can include law office failures as long as there is no prejudice to the defendant. (*Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 105, 761 N.E.2d 1018, 736 N.Y.S.2d 291 [2001]). A court "may consider [plaintiff's] diligence, or lack thereof, along with any other relevant factor . . . including expiration of the Statute of Limitations, the 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." (*Henneberry*, 91 A.D.3d at 496, citing *Leader*, 97 N.Y.2d at 105-106).

Pursuant to CPLR §311, personal service upon a corporation is made by delivering the summons and complaint 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..." (McKinneys, Cons Laws of NY, Book 7B, CPLR §311); (see *Lakeside Concrete Corp. v Pine Hollow Building Corp.*, 104 AD2d 551, 479 NYS2d 256 [2d Dep't 1984]).

Service of process may also be effected on a corporation by personal service on the Secretary of State pursuant to Business Corporation Law § 306 (b), which provides that service of process on the Secretary of State "shall be made by personally delivering. . . at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee. . . . Service of process on such corporation shall be complete when the secretary of state is so served."

Here, plaintiffs maintain that service of process was properly made on Paradocs, within 120 days of filing the summons and amended complaint, on two separate occasions. Once, on June 14, 2019, by personal service on an agent authorized to accept service at the address that Paradocs filed with the Secretary of State; and secondly, by hand delivery of duplicate copies of the summons and amended complaint, together with the statutory fee, at the offices of the Secretary of State, on August 21, 2019. (NYSCEF Doc. Nos. 40, 45). Plaintiffs assert that since service on Paradocs was properly effected, the court need not grant an extension of time to plaintiffs for good cause or in the interest of justice and defendant's motion to dismiss must be denied.

Additionally, in response to the affidavit submitted by Alex Pollak in support of dismissal, claiming that the “address 136-23 72<sup>nd</sup> Road, Flushing New York 11367 has not been an office for PARADOCS WORLWIDE INC. at any time in 2019” (NYSCEF Doc. No. 26), plaintiffs correctly note that Paradocs cannot advise the Secretary of State that its address is 136-23 72nd Road, Flushing, New York 11367 and then move to dismiss claiming that the address is not the appropriate corporate address. (see, N.Y. Gen. Bus. Law §130 [3] [requiring that any change in address must be disclosed to the New York Secretary of State in an amended statement filed within 30 days of the change]); (see also, *Parks v Steinbrenner*, 115 AD2d 395, 396-397, 496 NYS2d 25 [1<sup>st</sup> Dept 1985] [internal quotation marks and citation omitted] [the purpose of the statute “is to protect the public, to afford the public information as to the identity of the persons conducting the business, to prevent deception and confusion”]).<sup>1</sup>

Alternatively, plaintiffs maintain that should this court find that service upon Paradocs was not properly effected, an extension of time to serve Paradocs should be granted for good cause and in the interest of justice, as defendant has not suffered any prejudice and the circumstances presented by the record weigh in favor of granting the extension, including plaintiffs’ diligence, the expiration of the statute of limitations on plaintiffs’ claims and the absence of prejudice to defendant in light of its actual notice of the summons and amended complaint (see *Deutsche Bank, AG v Vik*, 149 AD3d 600, 50 NYS3d 291 [1st Dept 2017]).

Defendant claims that at the time it filed the motion to dismiss, plaintiffs had not filed with the court, proof of service upon Secretary of State; it argues that since the affidavit of

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<sup>1</sup> After plaintiffs served Paradocs on August 21, 2019 through the Secretary of State, Paradocs filed a Certificate of Change with the Department of State, pursuant to Section 805-A of Business Corporation Law on January 14, 2020, changing its address for service of process to 550 Vanderbilt Avenue, Suite # 722, Brooklyn, New York, 11238 and designating Alex Pollak as its registered agent upon whom process against the corporation may be served. (NYSCEF Doc. No. 54).

service was only filed in opposition to the instant motion, service was not complete and the court does not have personal jurisdiction over defendant Paradocs. Defendant's argument is unavailing as the affidavit of service was filed with the court on September 16, 2019, within 120 days of plaintiff's filing the summons and amended complaint, and in accordance with Business Corporation Law § 306, Paradocs was served on August 21, 2019, when the Secretary of State was served. (see, *Cascione v Acme Equip. Corp.*, 23 AD2d 49, 50, 258 NYS2d 234 [1<sup>st</sup> Dept 1965] [Service upon a corporation "shall be complete when the secretary of state is so served (Business Corporation Law, § 306)"]).

Here, the actions and events leading to Kyle Press' death are alleged to have occurred on June 18, 2017. Plaintiffs' amended complaint naming Paradocs as an additional defendant was filed on June 7, 2019. (NYSCEF Doc. Nos. 12, 13, 38). Pursuant to CPLR § 306-b, plaintiffs were provided 120 days after filing the amended complaint, to effect timely service upon Paradocs. Plaintiffs have demonstrated that this court has personal jurisdiction over Paradocs because within those 120 days, on August 21, 2019, by delivering duplicate copies of the summons and amended complaint to the Secretary of State, together with the statutory fee, plaintiffs properly completed service of process upon Paradocs. (NYSCEF Doc. No. 45).

Having found that Paradocs was served on August 21, 2019, this court need not undertake an interest of justice analysis as no extension of time is needed to serve Paradocs and defendant's motion to dismiss is denied.

## CONCLUSION

Accordingly, it is hereby,

ORDERED that defendant, Paradocs Worldwide Inc's motion to dismiss the complaint, motion sequence number 002, is denied in its entirety; and it is further

ORDERED, that the parties shall electronically meet and confer and shall submit to this court a proposed Stipulation and Order extending the discovery deadlines set forth in the Compliance Conference Order to reflect new dates for discovery responses and new deposition dates, leaving a space in the proposed Stipulation and Order for the court to extend the Note of Issue date that was originally scheduled to be filed on December 31, 2020; and it is further

ORDERED that the said proposed Stipulation and Order shall be submitted to the court by filing of same with the New York State Courts Electronic Filing System.

4/7/2021  
DATE

  
W. FRANC PERRY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE