

**State of New York v Deleon**

2024 NY Slip Op 34907(U)

July 22, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 628244/2023

Judge: George Nolan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 628244/2023

SUPREME COURT – STATE OF NEW YORK  
PART 55 – SUFFOLK COUNTY

**P R E S E N T:**

**Hon. George Nolan**  
Justice Supreme Court

-----x  
STATE OF NEW YORK,

Plaintiff,

-against-

JASMINE DELEON,

Defendant.

-----x

Mot. Seq. No. 001 – MG  
Orig. Return Date: 04/09/2024  
Mot. Submit Date: 04/11/2024

**PLAINTIFF’S ATTORNEY**  
NEW YORK STATE OFFICE OF  
THE ATTORNEY GENERAL  
2100 Middle Country Road, Suite 108  
Centereach, New York 11720

**DEFENDANT PRO SE**  
JASMINE DELEON  
14 Bainton Street  
Yonkers, New York 10704

Upon the e-filed documents numbered 05 through 13, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

**ORDERED** that the motion by plaintiff New York State for an order deeming the affidavit of service timely filed *nunc pro tunc* is granted.

This is an action in which plaintiff New York State seeks \$3,938.00 for medical services rendered to defendant Jasmine Deleon at Stony Brook Hospital on January 8, 2022. Plaintiff commenced this action by filing a summons with notice on November 13, 2023. The affidavit of service, demonstrating service on defendant Jasmine Deleon pursuant to CPLR 308(2), was untimely filed on January 26, 2024.

Where, as here, service was made pursuant to CPLR 308(2), “proof of such service shall be filed with the clerk of the court ... within twenty days of ... delivery or mailing, whichever is effected later,” and “service shall be complete ten days after such filing” (CPLR 308(2)). In this case, it is undisputed that the affidavit of service was not filed within the requisite twenty days.

Failure to timely file proof of service is “a procedural irregularity, not a jurisdictional defect” and may be cured by deeming such proof filed *nunc pro tunc* (*First Fed. Sav. & Loan Assn. of Charleston v. Tezzi*, 164 AD3d 758, 84 NYS3d 239 [2d Dept 2018]). CPLR 2001 “allows a court to permit a mistake, omission, defect, or irregularity in the filing [of] process to be corrected at any stage of the action, provided it does not prejudice a substantial right of a party” (*Furuya v.*

*Parry*, 2019 NY Slip Op 31354 [U], [Sup Ct, NY County 2019]). Here, the motion is unopposed, and no such prejudice is alleged.

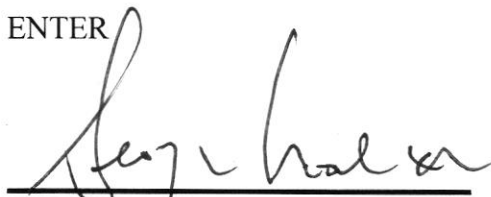
Accordingly, it is hereby

**ORDERED** that plaintiff's motion for an order deeming the affidavit of service timely filed *nunc pro tunc* is granted without opposition.

Order signed herewith.

The foregoing constitutes the decision and Order of the Court.

ENTER



HON. GEORGE NOLAN, J.S.C.

DATE: July 22, 2024  
Riverhead, NY

FINAL DISPOSITION

NON-FINAL DISPOSITION

At a Special Term Part <sup>55</sup> ~~H~~ of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Supreme Courthouse, One Court Street, Riverhead, New York 11901, on the 22<sup>nd</sup> day of July, 2024

PRESENT:

Hon. **HON. GEORGE NOLAN**

Presiding.

-----X  
STATE OF NEW YORK,

NUNC PRO TUNC  
ORDER

Plaintiff,

Index No. 628244/2023

-against-

JASMINE DELEON,

Defendant.  
-----X

UPON reading and filing the affirmation of regularity of ANNE MARIE RAGO, dated January 31, 2024;

GN  
JSC

NOW, on motion of LETITIA JAMES, Attorney General, the attorney for the Plaintiff, by ANNE MARIE RAGO, Assistant Attorney General, it is;

ORDERED, that the late filing of the within affidavit of service be excused, and that the same be deemed to be timely filed in accordance with CPLR 308(2) ~~or (4)~~, nunc pro tunc, and it is further;

GN  
JSC

*(State of New York and Jasmine Deleon  
Index No. 628244/2023)*

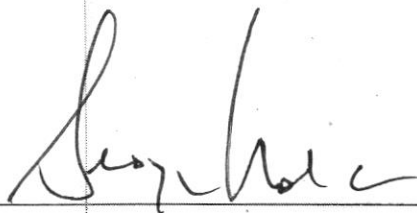
ORDERED, that a copy of this Order with notice of entry, be served upon the Defendant by regular first-class mail at her last known address, and it is further;

ORDERED, that service shall be deemed complete ten (10) days after the filing with the Clerk of Suffolk County of the proof of service of a copy of this Order with notice of entry, and it is further;

ORDERED, that the Defendant thereupon shall have thirty (30) days within which to appear, answer or move this Court with respect to this action.

ENTER

Dated 7/22/24



Justice of the Supreme Court

**HON. GEORGE NOLAN**

**GRANTED**

**JUL 22 2024**

**VINCENT PULEO  
Clerk of Suffolk County**