

**Parrilla v Abed**

2025 NY Slip Op 34159(U)

October 21, 2025

Supreme Court, New York County

Docket Number: Index No. 805144/2020

Judge: Kathy J. King

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

-----X

Nicole Parrilla as Administrator of the Estate of VIRGINIA GRIFFEN, Plaintiff,

- v -

ANTOINE ABED, WESTSIDE PULMONARY, P.C., MOUNT SINAI HOSPITAL, and WEST SIDE RADIOLOGY P.C. d/b/a NEW YORK RADIOLOGY PARTNERS,

Defendants.

-----X

INDEX NO. 805144/2020
MOTION DATE 05/15/2025
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 90, 91, 92, 93, 94, 95, 96, 97, 148, 149, 150, 152, 153, 159 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Upon the foregoing documents, and oral arguments having been heard, Plaintiff Nicole Parrilla as Administrator of the Estate of VIRGINIA GRIFFEN moves this Court for an Order granting leave to reargue the Court’s Decision and Order dated September 26, 2023 and entered on September 28, 2023 with regard to Plaintiff’s Cross-Motion pursuant to CPLR 306-b, extending the time for service of process of the Amended Summons and Amended Verified Complaint, nunc pro tunc, upon defendant, WEST SIDE RADIOLOGY P.C. d/b/a NEW YORK RADIOLOGY (“WSR”), by an additional 120 days and compelling Defendant to immediately designate the location for service, or, in the alternative, deeming the Amended Summons and Amended Verified Complaint duly and timely served upon defendant, WSR.

Defendant WSR opposes.

## BACKGROUND

The original plaintiff, Virginia Griffen, initiated this action by filing a Summons and Verified Complaint on June 2, 2020. The complaint, sounding in medical malpractice, alleges that the defendants' delay in diagnosing small cell lung cancer resulted in the progression of the disease, thereby diminishing the patient's prognosis and chance for a cure. Ms. Griffen passed away on June 29, 2020, resulting in an automatic stay of the proceedings. An affidavit of service attests that the original complaint was served on WSR on July 17, 2020, subsequent to Ms. Griffen's death.

On March 22, 2021, Nicole Parrilla was appointed Administrator for Ms. Griffen's Estate, and an Amended Summons and Verified Complaint was filed on July 2, 2021. According to a subsequent affidavit, the amended documents were allegedly served on WSR on July 9, 2021, via delivery to an "Ashley (Doe)" at 5 Columbus Circle, 9th Floor, New York, New York. This individual was described as "authorized to accept" service. In its Verified Answer dated January 6, 2023, WSR asserted an affirmative defense alleging lack of personal jurisdiction due to improper service of process.

On March of 2023, WSR moved for An Order dismissing the Amended Verified Complaint and this action as against Defendant, WEST SIDE RADIOLOGY ASSOCIATES, P.C. d/b/a NEW YORK RADIOLOGY PARTNERS i/s/h/a WEST SIDE RADIOLOGY P.C. pursuant to CPLR § 3211(a)(8). The Plaintiff opposed and cross-moved pursuant to CPLR 306-b. Subsequently, an Order from this Court entered on or about September 28, 2023, denied WSR's motion to dismiss the complaint for lack of personal jurisdiction and denied the Plaintiff's cross-motion as moot.

To the extent appealed, the September 28, 2023, order was unanimously reversed, on the law, without costs by the Appellate Division, First Judicial Department ("First Judicial

Department”). The First Judicial Department granted to the motion to the extent that the complaint against WSR was dismissed without prejudice, and the matter was remanded for a determination of the plaintiff’s cross-motion for a 120-day extension of time to serve the amended summons and verified complaint nunc pro tunc.

### DISCUSSION

As a preliminary matter, pursuant to CPLR 2221(d), a motion for leave to reargue is subject to specific requirements. The statute dictates that such a motion “shall be made, on notice, to the judge who signed the order,” shall be “based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion,” and crucially, “shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.” (CPLR 2221[d]). Accordingly, the instant motion is both properly and timely submitted, as it has been filed within the thirty-day limit following the Appellate Division’s Decision and Order, which explicitly remanded Plaintiff’s cross-motion to this Court for determination.

CPLR 306-b states that a summons and complaint be served within 120 days of commencement, but it grants courts discretion to extend this period upon a showing of either “good cause” or in the “interest of justice” (*see* CPLR 306-b). The “good cause” standard requires the plaintiff to demonstrate reasonable diligence, focusing on whether the failure to serve was due to circumstances beyond their control, such as an inability to locate the defendant (*see e.g., Lippett v Education Alliance*, 14 AD3d 430 [1st Dept 2005]). Additionally, the more flexible “interest of justice” standard requires the court to balance competing interests and review factors such as the action’s timely commencement, the plaintiff’s good faith, and the defendant’s receipt of actual notice (*see e.g. Frank v Garcia*, 84 AD3d 654, 654-55 [1st Dept 2011]).

Here, the Court finds that Plaintiff satisfies both prongs of CPLR 306-b. While Defendant argues that Plaintiff fails to meet both the good cause standard, the Court finds that Plaintiff established good cause by multiple documented service attempts at Defendant's Principal Executive Office, together with good-faith efforts to locate the Defendant following his out-of-state relocation. Further, contrary to Defendant's contentions that the interest of justice standard was not met, the Defendant received actual notice of the claim as early as July 2020 and subsequently retained counsel who actively participated in litigation correspondences with the Court and discovery.

Accordingly, the motion to extend the time for service of the amended summons and verified complaint *nunc pro tunc* is hereby granted.

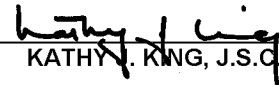
Based on the foregoing, it is hereby

**ORDERED** that Plaintiff's cross-motion, pursuant to CPLR 306-b, extending the time for service of process of the Amended Summons and Amended Verified Complaint, nunc pro tunc, upon defendant, WEST SIDE RADIOLOGY P.C. d/b/a NEW YORK RADIOLOGY, by an additional 120 days and compelling Defendant to immediately designate the location for service, or, in the alternative, deeming the Amended Summons and Amended Verified Complaint duly and timely served upon said defendant is granted; and it is further

**ORDERED** that the Amended Summons and Amended Verified Complaint is deemed duly and timely served upon defendant WEST SIDE RADIOLOGY P.C. d/b/a NEW YORK RADIOLOGY; and it is further

**ORDERED** that Plaintiff serve a copy of this order upon the Defendant, WEST SIDE RADIOLOGY P.C. d/b/a NEW YORK RADIOLOGY, with notice of entry within 30 days of entry of this order.

This constitutes the decision and order of the Court.

<u>10/21/2025</u> DATE					 KATHY J. KING, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE