

**Rodrigues v Greenfield**

2025 NY Slip Op 35009(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 805146/2025

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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JACQUELINE RODRIGUES,  
  
Plaintiff,

**INDEX NO.** 805146/2025

**MOTION DATE** 10/15/2025

**MOTION SEQ. NO.** 001

- v -

JEFFREY GREENFIELD, M.D., GRAHAM WINSTON, M.D.,  
ADNAN KHAN, M.D., NEW YORK-PRESBYTERIAN WEILL  
CORNELL MEDICAL CENTER, also known as WEILL  
CORNELL MEDICINE, and JOAN AND SANFORD I. WEILL  
CORNELL MEDICAL COLLEGE OF CORNELL  
UNIVERSITY,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for EXTEND – TIME TO SERVE PROCESS.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and negligent hiring, training, supervision, and retention of healthcare personnel, the plaintiff moves pursuant to CPLR 306-b to extend the time within which she may serve process upon the defendant Adnan Khan, M.D. No party opposes the motion. The motion is granted, and the time within which the plaintiff may serve process upon Khan is extended until April 20, 2026.

The plaintiff commenced this action on May 21, 2025. Upon commencing the action on that date, she had 120 days within which to serve process upon Khan (see CPLR 306-b). Since that 120-day period lapsed on September 18, 2025, the plaintiff was required to have served the summons and complaint upon Khan no later than that date. The plaintiff and her attorneys, however, were unable to locate Khan by that date.

According to an affirmation executed on August 7, 2025 by Alex Colon, who is employed by process service company One World Judicial Services, Inc., Colon attempted to serve Khan

by delivering a copy of the summons and complaint to a person of suitable age and discretion at the defendant New York Presbyterian-Weill Cornell Medical Center on August 6, 2025, but was informed that Khan was no longer an employee at that hospital. As the plaintiff's attorney described it, his firm conducted multiple searches, including a skip trace search for dozens of persons with the same name as Khan, to find alternate addresses for service, which he annexed to his papers, but counsel ultimately learned that Khan was out of the country, and likely had relocated to Pakistan.

This motion ensued.

The plaintiff has the burden of demonstrating proper service of process by a preponderance of the evidence (*see Steuhl v CRD Metalworks, LLC*, 159 AD3d 1182, 1184 [3d Dept 2018]). CPLR 308(1) authorizes service of process upon a natural person by hand delivery of copies of the summons and complaint. Alternatively, CPLR 308(2) authorizes a plaintiff to serve the summons and complaint upon a natural person,

“by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend ‘personal and confidential’ and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law.”

“Personal jurisdiction is not acquired absent compliance with both the delivery and mailing requirements of the statute” (*Everbank v Kelly*, 203 AD3d 138, 143 [2d Dept 2022]). An address qualifies as a person's actual place of business within the meaning of CPLR 308(2) only if the person is “physically present with regularity” at the address and is “shown to regularly transact

business at that location” (*1136 Realty, LLC v 213 Union St. Realty Corp.*, 130 AD3d 590, 591 [2d Dept 2015] [internal quotation marks omitted]; see *Rosario v NES Med. Servs. of N.Y., P.C.*, 105 AD3d 831, 833 [2d Dept 2013]; *Sage Realty Corp. v Wallack Firm, P.C.*, 75 Misc 3d 186, 189 [Sup Ct, N.Y. County 2022]). CPLR 308(6) defines “actual place of business” as “any location that the defendant, through regular solicitation or advertisement, has held out as its place of business.” Since Khan no longer worked in New York when the plaintiff commenced this action, the plaintiff could not effectuate service upon Khan at his former place of business within the State. Moreover, because Khan no longer lived in New York when the plaintiff commenced this action, he could not properly be served with process at a residence address.

As the Appellate Division, First Department, has explained it, although CPLR 306-b provides that,

“[i]f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant,’ it alternatively authorizes the court, ‘upon good cause shown or in the interest of justice,’ to ‘extend the time for service.’ . . . In deciding such a motion, the express language of CPLR 306-b gives the court two options: dismiss the action without prejudice; or extend the time for service in the existing action. . . . In these circumstances, the court’s options [are] limited to either dismissing the action outright, or extending the time for plaintiff to properly effect service”

(*Henneberry v Borstein*, 91 AD3d 493, 495 [1st Dept 2012]; see *Sottile v Islandia Home for Adults*, 278 AD2d 482, 484 [2d Dept 2000] [“The statute gives a court the option of extending the time to serve *instead of* dismissing the action”] [emphasis in original]). A court is only precluded from entertaining a request to extend the time for service pursuant to CPLR 306-b where the action has been dismissed by virtue of the entry of a judgment of dismissal (see *State of N.Y. Mortgage Agency v Braun*, 182 AD3d 63, 70 [2d Dept 2020]), which has not occurred here.

As the Court of Appeals explained in *Leader v Maroney* (97 NY2d 95, 105-106 [2001]),

“the legislative history is unequivocal that the inspiration for the new CPLR 306-b provision was its Federal counterpart. The revision was intended to offer New York courts the same type of flexibility enjoyed by Federal courts under rule 4(m) of the Federal Rules of Civil Procedure. Rule 4(m) similarly provides two

alternative grounds for a plaintiff seeking an extension of time to serve process. The rule explicitly mandates that ‘if the plaintiff shows good cause for the failure, the court shall extend the time for service] (Fed Rules Civ Pro, rule 4[m]). The rule also authorizes a second, unspecified discretionary basis for extension ‘even if there is no good cause shown’ (1993 Advisory Comm Note, Fed Rules Civ Pro, rule 4[m]; see, *Boley v Kaymark*, 123 F3d 756, 758 [3d Cir], *cert denied* 522 US 1109).

“The interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties. Unlike an extension request premised on good cause, a plaintiff need not establish reasonably diligent efforts at service as a threshold matter. However, the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, 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. We also agree with the Appellate Division majorities that Federal case law analysis of rule 4(m) of the Federal Rules of Civil Procedure provides a useful template in discussing some of the relevant factors for an interest of justice determination (see, e.g., *AIG Managed Mkt. Neutral Fund v Askin Capital Mgt.*, 197 FRD 104, 109 [SD NY]; see also, *State of New York v Sella*, 185 Misc 2d 549, 554 [Albany County Sup Ct] [compiling Federal factors]).

“The statute empowers a court faced with the dismissal of a viable claim to consider any factor relevant to the exercise of its discretion. No one factor is determinative--the calculus of the court’s decision is dependent on the competing interests of the litigants and a clearly expressed desire by the Legislature that the interests of justice be served.”

(some citations and internal quotation marks omitted).

The court concludes that the plaintiff qualifies for an extension of time under the “good cause” exception, since she made numerous diligent efforts to locate and serve Khan at numerous locations, and only learned later than Khan had relocated to Pakistan (see *Wells Fargo Bank, NA v Burshstein*, 172 AD3d 1437, 1440 [2d Dept 2019]). Moreover, upon consideration of the factors articulated by the Court of Appeals in *Leader*, this action also qualifies for an extension of time under the “interest of justice” category (see *Henneberry v Borstein*, 91 AD3d at 495-496). In this respect, the allegations in the complaint are not facially non-meritorious, the plaintiff did not evince a significant delay in attempting service upon Kahn in the first instance, and the request for the extension of time was made within a reasonable

time after the plaintiff learned of Khan’s most recent whereabouts. Consequently, the court discerns no prejudice to Kahn if the time to serve him with process were extended.

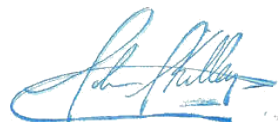
Since Khan apparently now resides in Pakistan, service must be effectuated in accordance with the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 UST 361, 658 UNTS 163, TIAS 10072), which Pakistan ratified on December 7, 1988, and became effective as to it on August 1, 1989.

Accordingly, it is,

ORDERED that the plaintiff’s motion is granted, without opposition, and her time to effectuate service of process upon the defendant Adnan Khan, M.D., is extended up to and including April 20, 2026, and it must be effectuated in accordance with the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters

This constitutes the Decision and Order of the court.

12/22/2025  
DATE

  
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JOHN J. KELLEY, 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"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: