

**Raza-Wiese v Gidumal**

2026 NY Slip Op 30072(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 150363/2023

Judge: Christopher Chin

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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. CHRISTOPHER CHIN PART 22

Justice

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SABRINA RAZA-WIESE,

Plaintiff,

- v -

STEVEN L GIDUMAL, NATIONAL CAR RENTAL,
NATIONAL CAR RENTAL SYSTEM, INC.

Defendant.

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INDEX NO. 150363/2023
MOTION DATE 01/16/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48

were read on this motion to/for DISMISSAL

Upon the foregoing documents, submitted after oral argument, it is

ORDERED that the motion by defendant Steven L. Gidumal pursuant to CPLR 3211 (a) (8) to dismiss the complaint for lack of personal jurisdiction and cross-motion by plaintiff pursuant to CPLR 306-b extending plaintiff's time to serve defendant Gidumal, are decided as provided below.

BACKGROUND & MOTION/CROSS-MOTION

Plaintiff alleges in her complaint that on January 25, 2020, she suffered serious personal injuries when she was struck by a motor vehicle operated by defendant Gidumal, while she was a pedestrian. The accident occurred on Albany Street in New York, New York.

Plaintiff commenced this action on January 12, 2023. On January 24, 2023, plaintiff allegedly served defendant Gidumal with the summons and complaint pursuant to CPLR 308 (2), service on a person of suitable age and discretion, in this case a doorman at a building located at 450

North End Avenue, New York, New York. Defendant Gidumal filed an answer which included an affirmative defense of improper service as to Gidumal. Thereafter, defendant Gidumal timely filed the within motion to dismiss based on improper service.

Gidumal argues that he was not properly served because he has not been a resident at 450 North End Avenue - the address where he was allegedly served - since 2017. Instead, Gidumal claims that, at the time of the attempted service, he had been living at 651 Headquarters Road, Ottsville, Pennsylvania. He contends that since service was at the wrong address, the court lacks personal jurisdiction over him, and therefore this case must be dismissed. He further argues that since more than three (3) years have elapsed since the date of the accident, the statute of limitations has expired, and therefore plaintiff is barred from recommencing this suit and/or getting an extension of time to serve under CPLR 306-b.

Gidumal admits that at the time of the accident, his driver's license listed his address as 450 North End Avenue, even though he no longer lived there. The license was apparently shown to plaintiff at the time of the accident, and plaintiff took a photo of the license.

On September 11, 2020, Gidumal updated his license information to reflect his then current address of 350 Albany Street, Apt. PH-2, New York, New York. In August 2022, Gidumal moved to his current address in Ottsville. Thereafter, Gimudal surrendered his New York license, and on October 11, 2022, a Pennsylvania driver's license was issued to him.

Gidumal argues that while CPLR 306-b, allows a plaintiff who fails to serve a party within 120 days after the commencement of an action extra time to serve a party upon good cause or in the interest of justice, here, since plaintiff did not act with diligence to locate him at his present address, plaintiff cannot show good cause. Gidumal also argues that the court lacks the legal authority to extend the expired statute of limitations.

Plaintiff opposes the motion and cross-moves, if necessary, for an extension of time to serve defendant Gidumal, in the interest of justice, under CPLR 306-b. Plaintiff argues that service was properly conducted and therefore the court has jurisdiction over Gidumal. At the time of the accident and service of the pleadings, plaintiff believed that Gidumal was living at 450 North End Avenue in New York, given that his driver's license contained that information. Moreover, plaintiff's counsel conducted a DMV search following the accident in February 2020, which confirmed Gidumal's address as 450 North End Avenue (as provided in a printout from DMV). Additionally, on or about June 23, 2020, plaintiff's counsel emailed Gidumal (at the email address given by Gidumal), a letter of representation and notice that an action was being commenced against him, at an email address he had provided to plaintiff. The documents clearly provided Gidumal's address as 450 North End Avenue. Significantly, Gidumal never corrected the mistake in his address or alerted plaintiff that he no longer lived at that address. Plaintiff urges that Gidumal misled her, and that his actions were a deliberate attempt to evade service.

It is noted that, plaintiff initially commenced an action against Gidumal in 2020 ("the 2020 action") for the same accident involved in this matter, with service upon Gidumal on February 8,

2021, also at 450 North End Avenue. Gidumal never filed an answer in that initial action. The 2020 action was subsequently abandoned by plaintiff, and the within action was commenced.

Additionally, upon learning of defendant Gidumal's contention of improper service (on or about February 2025), plaintiff conducted a search of his residences between January 2020 through February 2025, which revealed that he maintained approximately 17 different residences.

In reply, defendant Gidumal argues that plaintiff failed to act diligently to locate his current address and failed to act in a timely manner.

#### DISCUSSION

As stated, plaintiff allegedly served defendant Gidumal pursuant to CPLR 308 (2) – delivering the summons and complaint 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 – by serving Gidumal at 450 North End Avenue. Based upon the submissions, it appears that such address was not his “dwelling place or usual place of abode” at the time of service, and therefore, defendant Gidumal was not properly served.

In any event, under CPLR § 306-b, “[i]f service [of a summons and complaint] is not made upon a defendant within [120 days after the commencement of an action], the court, upon motion, shall...upon good cause shown or in the interest of justice, extend the time for service.”

The Court of Appeals has held that “good cause shown” and “interest of justice” are separate and apart and that under the “interest of justice” standard, a showing of reasonable diligence or “good

cause” need not be a ‘gatekeeper’ but is simply one of many relevant factors to be considered by the court (*Leader v. Maroney*, 97 NY 2d 95 [2001]). Moreover, although a plaintiff may have delayed in seeking an extension, other relevant factors - including his or her demonstration of an allegedly meritorious cause of action, failure by the defendant to show how he is prejudiced by an extension, and a plaintiff’s unsuccessful efforts to effect service on the defendant which may not have amounted to an extreme lack of diligence – weigh heavily in granting an extension, in the interest of justice (*see Galindo v. Doherty*, 234 AD3d 571 [1<sup>st</sup> Dept 2025]).

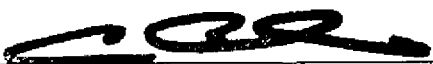
Here, the court finds, in its discretion, and in the in interest of justice, plaintiff’s cross-motion to extend plaintiff’s time to serve defendant Gidumal should be granted. In reaching this decision, the court considered that defendant Gidumal’s valid driver’s license presented to plaintiff on the day of the accident showed his residence at the address where the attempted service occurred. This is compounded by the fact that he provided his license to plaintiff on the date of accident, knowing that it contained an incorrect address. Defendant Gidumal admittedly did not alert the DMV of the fact that he no longer resided at 450 North End Avenue until September 11, 2020, approximately eight (8) months after the date of accident and approximately three (3) years after he moved from there. Significantly, Gidumal was in violation of NY Vehicle & Traffic Law 505 (5), which provides that it is the “duty of every licensee to notify the commissioner in writing of any change of residence of such licensee within ten days after such change occurs” (*see also Williams v Yassky*, 199 AD2d 18 [1<sup>st</sup> Dept 1993] [the defendant’s failure to notify the DMV of the change in her address as required by VTL 505 (5), estopped her from contesting the service of process contained in her license exhibited at the scene of the accident]). Moreover, it is undisputed that Gidumal had notice of a lawsuit against him as early as June 23, 2020, when

plaintiff's counsel emailed the letter of representation and notice that an action was being commenced. Furthermore, when plaintiff's counsel emailed the June 23, 2020 letter to the email address provided by Gidumal, clearly indicating Gidumal's address as 450 North End Avenue, Gidumal never corrected the mistake, nor alerted plaintiff that he no longer lived there. Additionally, plaintiff demonstrated a meritorious claim via, *inter alia*, her affidavit of merit, in which she alleges injuries to her head, left hip, left knee and left hand, as a result of the subject accident, as well as photographs depicting injuries to her face, namely bleeding from above her right eye which looked to have been sutured. Further, there was a text exchange between Gidumal and plaintiff in which he apologized and offered to pay for plaintiff's medical bills. Moreover, there has been no showing by Gidumal of any prejudice (*see Kaufman v Bauer*, 36 AD3d 481 [1<sup>st</sup> Dept 2007] [mere passage of time is insufficient to create prejudice]).

Accordingly, based upon the above, it is

ORDERED that defendant Steven L. Gidumal's motion to dismiss the complaint is denied and plaintiff's cross-motion for an extension to serve defendant Gidumal is granted in the interest of justice; and it is further

ORDERED plaintiff Sabrina Raza-Wiese is to serve defendant Gidumal within 45 days of the date of entry of this order.

<u>1/7/2026</u> DATE	 CHRISTOPHER CHIN, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" 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