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CasePrepPlus

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Summarizing recent significant New York appellate cases

What constitutes "good cause" to obtain an extension of time to serve a complaint under CPLR 306-b? Few courts have addressed that clause, and most have held that good cause did not exist when they did. The Second Department recently dove into this issue, offering its interpretation of the "good cause" necessary to get an extension to serve a complaint, and held that the plaintiff's diligent efforts at service had satisfied that standard. Let's take a look at that opinion and what else has been going on in New York's appellate courts this week.

FIRST DEPARTMENT

TORTS, STATUTE OF LIMITATIONS

Lafferty v Avila, 2026 NY Slip Op 05147 (1st Dept Aug. 27, 2026)

Issue: Does a physician's alleged negligence in recording inaccurate information about a patient's medical condition on a New York State Department of Motor Vehicles form, used to evaluate whether the patient's driver's license should be reinstated, constitute medical malpractice or ordinary negligence?

Facts: After a driver suffered epileptic seizures caused by a brain lesion, he was treated regularly by the defendant, Dr. Avila, a neurologist employed by defendant Memorial Sloan Kettering Cancer Center. In 2017, the driver was involved in a minor car accident due to suffering a seizure, and had his driver's license suspended. Because the plaintiff's license had been suspended due to suffering the seizure while driving, he was required to demonstrate to the DMV that he was fit to drive. "One way the driver could demonstrate such fitness was to establish, by a physician's statement so attesting, that he had not experienced a loss of consciousness within the previous 12 months. The driver therefore submitted to the DMV a 'Physician Statement for [DMV] Medical Review Unit'. The second page of the two-page form, which required completion by the driver's physician (or other qualified medical professional), contained 10 questions relating to the driver's medical condition. Some questions called for the physician to provide information regarding the driver's medical condition generally, and information derived from a recent examination of the driver. Other questions called for the physician's medical judgment or opinion."

Dr. Avila examined the driver on May 15, 2019 and noted in his chart that the driver's last seizure was January 4, 2019, four months earlier. But when Dr. Avila filled out the DMV form, he recorded that the driver's last seizure was in June 2017, more than the necessary 12 months, and opined that the driver's epilepsy would not interfere with his ability to drive. "[I]t is Dr. Avila's answer to the date-of-last-episode question (question number 4) that lies at the heart of this appeal, given the obvious discrepancy between the June 2017 date recorded on the DMV form and the January 4, 2019 date reflected in Dr. Avila's May 15, 2019 treatment note. The June 2017 date does not appear to be random. Prior to May 15, 2019, Dr. Avila last saw the driver on January 23, 2019, at which time he recorded that the driver's last seizure was 'June 2017.' It is possible, therefore, that Dr. Avila transcribed the date from the January 23, 2019 treatment notes instead of the May 15, 2019 notes when filling out the DMV form. Shortly after the May 15 examination, the DMV granted the driver's application and reinstated his driver's license."

Only a few months later, the driver suffered another epileptic seizure and was involved in a "horrific" accident that caused the death of two people. The decedents' estates then brought this action for medical malpractice and negligence against Dr. Avila and the hospital, alleging in particular that Dr. Avila negligently completed the DMV form that allowed the driver to have license reinstated by mistakenly stating the date of the driver's last epileptic seizure. Defendants moved to dismiss and for summary judgment, before discovery, arguing that "plaintiffs' survival-action claims sounded in medical malpractice and were governed by a two-and-a-half-year statute of limitations. They asserted that because the claims accrued, at the latest, on July 28, 2019, the date of the accident, and factoring in the relevant COVID toll, the statute of limitations expired by October 16, 2022. They concluded that plaintiffs' claims, which were interposed on December 21, 2022, were therefore time-barred." Plaintiffs opposed, arguing that "their claims relating to Dr. Avila's negligent recording of the last date of the driver's seizure on the DMV form were ordinary negligence claims subject to a three-year statute of limitations. Plaintiffs asserted that the survival-action claims accrued on July 28, 2019; the three-year statute of limitations (with COVID toll) expired in March 2023; and the claims were timely brought in December 2022."

"Supreme Court, among other things, granted those aspects of defendants' motion seeking dismissal of the survival-action claims on the ground that those claims were time-barred. The court rejected plaintiffs' contention that their claims premised on Dr. Avila's misstatement on the DMV form sounded in ordinary negligence, concluding instead that they were medical malpractice claims governed by the shorter statute of limitations."

Holding: The First Department reversed, holding that "plaintiffs' survival-action claims, premised on the theory that Dr. Avila erroneously recorded the date of the driver's last seizure in the DMV form, which error led to the DMV reinstating the driver's license, sound in ordinary negligence." The court explained, "The distinction between medical malpractice and negligence is a subtle one, for medical malpractice is but a species of negligence. That distinction turns on whether the act complained of involves a matter of medical science or art requiring special skills not ordinarily possessed by lay persons (a medical malpractice claim), or whether the conduct complained of can instead be assessed on the basis of the common everyday experience of the trier of fact (an ordinary negligence claim). Relatedly, a claim sounds in medical malpractice when the challenged conduct constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician to a particular patient. However, when a plaintiff's allegations do not focus on negligence in furnishing medical treatment to a patient, but on a physician's failure in fulfilling a different duty, the claim sounds in ordinary negligence."

Here, the court held, "[t]he crux of the survival-action claims is not Dr. Avila's negligence in furnishing medical treatment to the driver; rather, the essence of the claims is that Dr. Avila failed to fulfill a different duty. The nature of the act underlying those claims — transcribing a date from a treatment note to a governmental administration form — is more administrative than medical in nature. Because the act underpinning the survival-action claims is administrative in nature, jurors can use their common everyday experience to evaluate whether Dr. Avila exercised due care. That a physician made the alleged administrative error does not transform the claim from one sounding in ordinary negligence to one for medical malpractice; the characterization of a particular claim depends not on the title of the actor but on the nature of the challenged act."

The fact that the complaint also pled medical malpractice claims did not undermine that the failure to record the correct seizure date on the DMV form sounded in ordinary negligence, the Court explained. "An action may sound in both medical malpractice and ordinary negligence, and the process required to complete the DMV form implicated both types of claims. Clearly, certain questions on the DMV form called for medical skill or judgment (e.g., questions 6 [describing factors that caused or contributed to the episode of the condition] and 10 [giving medical opinion regarding whether patient's condition will interfere with safe operation of motor vehicle]). Plaintiffs, however, have clarified that they are pursuing their survival-action claims only insofar as those claims are premised on Dr. Avila's failure to accurately record on the DMV form the date of the driver's last seizure, an administrative act subject to the principles of, and statute of limitations associated with, ordinary negligence." Because the plaintiffs' claims sounded in ordinary negligence, therefore, they were timely interposed.

SECOND DEPARTMENT

CIVIL PROCEDURE, EXTENSION OF TIME FOR SERVICE OF COMPLAINT

***M&T Bank v Global Sign Cleaning & Maintenance, Inc.*, 2026 NY Slip Op 05092 (2d Dept Aug. 26, 2026)**

Issue: **What constitutes "good cause" for extending the plaintiff's time to serve the summons and complaint pursuant to CPLR 306-b?**

Facts: "The plaintiff commenced this action against, among others, Shaya Brown, for a renewal judgment pursuant to CPLR 5014. According to an affidavit of service filed by the plaintiff, the process server affixed the summons, complaint, and notice of electronic filing to the door of '437 FOSTER AVENUE, 1, BROOKLYN, NY 11230.' Additionally, the affidavit of service stated that the process server had made two prior attempts to serve Brown at the same address, and mailed those documents to Brown at the same address."

Brown answered, asserted an affirmative defense of lack of personal jurisdiction, and then moved to dismiss the complaint on that ground. Brown submitted his own affirmation stating that he lived at 437 Foster Avenue, Apartment 3, and a neighbor's affirmation stating that the neighbor lived in Apartment 1. Plaintiff opposed the motion to dismiss and cross-moved for an extension of time to serve the complaint pursuant to CPLR 306-b. The plaintiff advised that it had served Brown at the address he had provided in an information subpoena a few years earlier, and confirmed the address with a LexisNexis database search. The plaintiff's process server again confirmed the service that was affirmed in the affidavit of service, and provided pictures of the papers left at 437 Foster Avenue, with date and time stamps.

"Supreme Court, among other things, in effect, granted Brown's motion pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against him to the extent of directing a traverse hearing, granted that branch of the plaintiff's cross-motion which was pursuant to CPLR 306-b to extend the time to serve Brown, and scheduled the traverse hearing for January 15, 2024, 'unless service of process has otherwise been effectuated.' The court explained that the plaintiff's prima facie proof of service was rebutted by Brown's evidence that Brown lived at Unit 3 instead of Unit 1, and evidence that the process server did not attempt service at the dates and times specified. The court also found that the plaintiff established good cause for the extension and concluded that the hearing would be academic if service were properly effected. Subsequently, the plaintiff served Brown, and a renewal judgment was entered, inter alia, in favor of the plaintiff and against Brown."

Holding: The Second Department, noting that a dearth of precedent exists interpreting CPLR 306-b's "good cause" standard, held that the plaintiff had shown the required good cause for an extension of time to serve the complaint. The court explained, "[p]ursuant to CPLR 306-b, a court may extend the time for service of the summons and complaint, 'upon good cause shown or in the interest of justice.' A court must grant an extension for good cause when the movant establishes that it has acted with reasonable diligence in attempting service. If good cause is not established, a court may grant an extension in the interest of justice, in the court's discretion, after considering a number of factors, including prejudice, but not necessarily reasonable diligence."

Cases that had previously applied the "good cause" extension, the court noted, involved situations where service could not be effected due to circumstances outside of the plaintiff's control. In contrast, "[m]ost decisions discussing good cause have determined that it was not established. For example, this Court has held that law office failure does not constitute good cause, and that good cause is not established when a movant fails to attempt service or make a reasonably diligent effort to effect service."

Here, the court held, "Supreme Court properly determined that the plaintiff established good cause. The plaintiff established reasonable diligence in ascertaining Brown's address. The plaintiff's counsel reasonably relied upon the representation made by Brown in response to the information subpoena, and counsel confirmed those representations by conducting database inquiries. Moreover, the process server established that he acted with reasonable diligence in effecting service. In response, Brown's conclusory assertions did not raise an issue warranting the denial of that branch of the plaintiff's cross-motion which was pursuant to CPLR 306-b to extend the time to serve the summons and complaint upon Brown or a hearing."

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