

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHRISTY T. O'CONNELL,

*

Plaintiff

*

v.

*

Case No.: JFM-14-1339
JFM-15-2418

STEVEN C. BRIGHAM, M.D., et al.

*

Defendant

*

* * * * *

MOTION FOR APPROVAL OF ALTERNATIVE SERVICE
FOR STEVEN C. BRIGHAM, M.D.

Plaintiff, Christy T. O'Connell, by and through her attorneys, Emily C. Malarkey and Salsbury, Clements, Bekman, Marder & Adkins L.L.C., hereby moves pursuant to Federal Rule of Civil Procedure 4 and Maryland Rule 2-121(b) for the Court to approve Plaintiff's alternative service of process on Defendant Steven C. Brigham, M.D., and in support thereof, states as follows:

1. This cause of action for medical negligence sounding in diversity was initiated with the filing of a Complaint on April 21, 2014.
2. On August 14, 2015, Plaintiff filed a separate Complaint against Defendants Steven C. Brigham, M.D. and Vikram H. Kaji, M.D., arising out of the same facts as the original Complaint. That case was consolidated with the instant case on October 16, 2015 (ECF No. 49).
3. Dr. Brigham is a New Jersey resident, but he owns the Maryland abortion clinics at issue in this lawsuit. According to the New Jersey State Department of the Treasury, Division of Taxation, Dr. Brigham owns a residence located at 1094 Corbridge Court, Vorhees, New Jersey. *See Exhibit 1-A.*

4. As will be seen below, Plaintiff has been actively trying to serve Dr. Brigham for months without success. At this time, the involvement of the Court is requested.

5. According to Federal Rule of Civil Procedure 4, service may be effected by delivering the summons and the complaint to the Defendant, by leaving the summons and complaint at the Defendant's residence with a person "of suitable age and discretion who resides there," or by delivering the summons and complaint to an agent of the Defendant who is authorized to receive service of process. *See* Fed. R. Civ. P. 4(e)(2). The Rule also allows service of process by "following state law for serving a summons in an action brought in court of general jurisdiction in the state where the district court is located or where the service is made." Fed. R. Civ. P. 4(e)(1).

6. Maryland state law outlines the procedure for serving a Defendant who evades service of process. According to the Maryland Rules, "[w]hen proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age or discretion at the place of business of the defendant." Md. Rule § 2-121(b).

7. Plaintiff has attempted to serve Dr. Brigham multiple times and in several manners since August of 2015. In the fall of 2015, Plaintiff retained a private process server through Elliott Legal Support Services, LLC, located in Cherry Hill, New Jersey. That process server was unable to serve Dr. Brigham by any of the methods acceptable under Fed. R. Civ. Pro. 4. *See Exhibit 1 (Affidavit of Emily C. Malarkey).*

8. Plaintiff then retained Status, LLC, a second private service company in New Jersey. As is set forth in **Exhibit 1-B**, through that company, Plaintiff made the following attempts to serve Dr. Brigham:

- a. Tried to deliver the Writ of Summons, Civil Cover Sheet, Complaint, and Election for Jury Trial to Dr. Brigham's residence at 1094 Corbridge Ct., Voorhees, NJ 08043, on November 11, 2015. Dr. Brigham did not answer the door. Dr. Brigham's neighbor, who lives at #1095, stated that the man that occupies #1094 is rarely at home. The neighbor further stated that he had not seen the man for the last two weeks.
- b. Attempted to serve Dr. Brigham at his last known place of business in New Jersey, located at 1 Alpha Avenue, Suite 27, Voorhees, NJ 0843, on November 12, 2015. An employee of the neighboring suite stated that Dr. Brigham moved out six months earlier.
- c. Repeatedly tried to serve Dr. Brigham at his residence (Corbridge Court) on the 14th, 16th, 20th, and 27th of November 2015. There was no answer each time.
- d. Attempted once again to serve Dr. Brigham at his residence on December 2, 2015. Again, there was no answer. A contact card was left.
- e. Tried once more to serve Dr. Brigham at his residence on December 5, 2015. There was no answer at the door, but the contact card had been removed. *See Exhibit 1-B (Affidavit of Jeffrey Tobin).*

9. After Plaintiff was unsuccessful at effecting service in the usual manner under the Federal Rules, Plaintiff took steps to serve Dr. Brigham according to Rule § 2-121(b) of the

Maryland Rules. On December 16, 2015, through a process server, Plaintiff delivered the Writ of Summons, Civil Cover Sheet, Complaint, and Election for Jury Trial to Dr. Brigham's place of business at OB/GYN Care, LLC, located at 9801 Georgia Avenue, Suite 338, Silver Spring, MD 20902.¹ Dr. Brigham's medical assistant, who agreed to only identify herself by her initials, "D.B.," accepted the documents on behalf of Dr. Brigham. D.B. stated that she would fax Dr. Brigham the documents. *See Exhibit 1-C (Affidavit of Kharii Brodie).*

10. In accordance with Md. Rule 2-121(b), Plaintiff also left a copy of the aforementioned documents at Dr. Brigham's residence on December 19, 2015. *See Exhibit 1-B.* At the time, the bedroom light in the house was on, but there was no answer at the door. Plaintiff posted the documents on the front door of Dr. Brigham's residence and took a photograph of the posted documents. *Id.*

11. As set forth above, Plaintiff has made numerous attempts to serve Dr. Brigham under the usual methods outlined by the Federal Rules of Civil Procedure 4. Dr. Brigham has evaded service of process.

12. Plaintiff has also fulfilled the requirements for service of process described in Maryland Rule 2-121(b). Namely, Plaintiff has physically left a copy of the summons, complaint, and all other papers filed with it at Dr. Brigham's last known residence, and has delivered a copy to a person of suitable age or discretion ("D.B.") at Dr. Brigham's place of business. *See Md. Rule 2-121(b).*

12. As a result, and under Fed. R. Civ. Pro. 4 and Md. Rule 2-121, Plaintiff respectfully requests entry of an order to approve the alternative methods of service she has effected on Dr. Brigham, and to consider him served in this matter.

¹ As stated in the Complaint, Dr. Brigham owns this clinic.

Emily C. Malarkey
EMILY C. MALARKEY (Bar No.: 28197)
SALSBURY, CLEMENTS, BEKMAN
MARDER & ADKINS, L.L.C.
300 West Pratt Street, Suite 450
Baltimore, Maryland 21201
(410) 539-6633
Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHRISTY T. O'CONNELL,

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Plaintiff

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v.

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Case No.: JFM-14-1339
JFM-15-2418

STEVEN C. BRIGHAM, M.D., et al.

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Defendant

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AFFIDAVIT OF EMILY C. MALARKEY, ESQ.

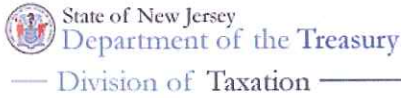
I, Emily C. Malarkey, hereby certify that I am over the age of 18 and am competent to testify to the following:

1. I represent the Plaintiff in the above-captioned action.
2. According to the New Jersey Department of the Treasury, Division of Taxation, Dr. Brigham owns a residential property located at 1094 Corbridge Court, Vorhees, New Jersey. *See Exhibit A.*
3. After receiving Summonses in the above-captioned action for Defendant Steven C. Brigham, M.D., I retained two separate private process servers in New Jersey to effectuate service on Dr. Brigham. The first company was unable to serve Dr. Brigham at his last known place of business or residential address, both located in Vorhees, New Jersey. The process server was unable to locate an alternative address for Dr. Brigham besides a Post Office Box.
4. I then retained a second process server in New Jersey, who made multiple attempts to serve Dr. Brigham at his last known address. Details of those attempts are set forth in the Affidavit attached as **Exhibit B** to this Affidavit.

5. A copy of the Summons, Complaint, and related documents were posted on the door of Dr. Brigham's residential address on Corbridge Court in Voorhees, New Jersey on December 19, 2015 in accordance with Maryland Rule 2-121(b). *See Exhibit B.*
6. In further compliance with Maryland Rule 2-121(b), I served, via process server, a copy of the Summons, Complaint, and related documents on an associate of Dr. Brigham's at his Maryland business address in Silver Spring, Maryland. *See Exhibit C.* That individual, who would identify herself only as "D.B.," indicated that she knew Dr. Brigham and would fax him the documents.
7. As set forth above, Plaintiff has made many reasonable and diligent attempts at serving Dr. Brigham. The involvement of the Court is required at this time.

Signed:


Emily C. Malarkey 12/22/15



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Property Tax Information as of January 10, 2015:

County:

District:

Block Number:

Lot Number:

Qualifier:

Property Class:

Property Location:

Owner Name:

	<u>Cnty/Dist</u>	<u>Block</u>	<u>Lot</u>	<u>Qualifier</u>	<u>Class</u>	<u>Property Location</u>	<u>Owner Name</u>
View	0434	150.10	3	C1088	2	1088 CORBRIDGE CT	NOGRALES, REBECCA A
View	0434	150.10	3	C1089	2	1089 CORBRIDGE CT	DOUGLAS, WILLIE T & CAROLYN J
View	0434	150.10	3	C1090	2	1090 CORBRIDGE CT	SANTIAGO, DIANA D
View	0434	150.10	3	C1091	2	1091 CORBRIDGE CT	BEDLYON, MIRIAM S IRREV TRUST
View	0434	150.10	3	C1092	2	1092 CORBRIDGE CT	BENSON, JOHNNA
View	0434	150.10	3	C1093	2	1093 CORBRIDGE CT	ANDERSON, LAUREN L
View	0434	150.10	3	C1094	2	1094 CORBRIDGE CT	BRIGHAM, STEVEN C
View	0434	150.10	3	C1095	2	1095 CORBRIDGE CT	UNDERWOOD, JOHN
View	0434	150.10	3	C1096	2	1096 CORBRIDGE CT	WEXLER, LEONARD P
View	0434	150.10	3	C1097	2	1097 CORBRIDGE CT	KHATIWALA, ARVIND & DAXA
View	0434	150.10	3	C1098	2	1098 CORBRIDGE CT	ELLENGOLD, SHEILA A
View	0434	150.10	3	C1099	2	1099 CORBRIDGE CT	LI, JUN & NI, HONG
View	0434	150.10	3	C1100	2	1100 CORBRIDGE CT	BHATTACHARJI, ADITYA
View	0434	150.10	3	C1101	2	1101 CORBRIDGE CT	BITETTI, VINCENT A & ELAINE J
View	0434	150.10	3	C1102	2	1102 CORBRIDGE CT	SINGH, ARMAN D
View	0434	150.10	3	C1103	2	1103 CORBRIDGE CT	GRAUS, ERIC
View	0434	150.10	3	C1104	2	1104 CORBRIDGE CT	ANONUEVO, WILFREDO & MARY ANN
View	0434	150.10	3	C1105	2	1105 CORBRIDGE CT	NTELEKOS, ELENI & KOSTANTINOS



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RETURN OF SERVICE

UNITED STATES DISTRICT COURT
District of Maryland

Case Number: 14-CV-01339-JFM

Plaintiff:

CHRISTY T. O'CONNELL

vs.

Defendant:

STEPHEN C. BRIGHAM, M.D., ET AL

For:

Emily C. Malarkey

Received by STATUS, L.L.C. to be served on **STEPHEN C. BRIGHAM, M.D., 1094 CORBRIDGE CT, VOORHEES, NJ 08043.**

I, Jeffrey Tobin, do hereby affirm that on the **19th day of December, 2015 at 7:40 pm, I:**

POSTED by attaching a true copy of the **Summons In A Civil Action, Civil Cover Sheet, Complaint, Exhibits 1-4** with the date and hour of service endorsed thereon by me, to a conspicuous place on the property of the within named person's **RESIDENCE** at the address of: **1094 CORBRIDGE CT, VOORHEES, NJ 08043.**

Additional Information pertaining to this Service:

11/11/2015 7:45 am Attempted Service: 1094 CORBRIDGE CT, VOORHEES, NJ 08043 NO ANSWER, DID NOT LEAVE CONTACT CARD. PER NEIGHBOR AT # 1095 STATES THE MAN THAT OCCUPIES # 1094 IS RARELY THERE, ASKED WHEN LAST SEEN, HE SAID TWO WEEKS . PHONEBOOK CIRCULAR STILL ON FRONT PORCH

11/12/2015 9:05 am Attempted Service: 1 ALPHA AVENUE, SUITE 27, VOORHEES, NJ 08043 ADVISED BY NEIGHBORING SUITE EMPLOYEE , THAT STEPHEN C. BRIGHAM M.D. MOVED OUT SIX MONTHS AGO . NO FURTHER INFORMATION.

11/14/2015 10:52 am Attempted service at 1094 CORBRIDGE CT, VOORHEES, NJ 08043, No answer.

11/16/2015 5:42 pm Attempted service at 1094 CORBRIDGE CT, VOORHEES, NJ 08043, No answer.

11/20/2015 8:12 am Attempted service at 1094 CORBRIDGE CT, VOORHEES, NJ 08043, No answer.

11/27/2015 7:00 am Additional attempts made at 1094 CORBRIDGE CT, VOORHEES, NJ 08043, no answer.

12/2/2015 7:20 am Attempted Service: 1094 CORBRIDGE CT, VOORHEES, NJ 08043 NO ANSWER, CONTACT CARD STILL POSTED . ASSIGNED PARKING SPACE VACANT .

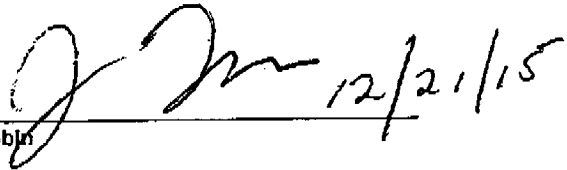
12/5/2015 4:45 pm Attempted Service: 1094 CORBRIDGE CT, VOORHEES, NJ 08043 NO ANSWER, CONTACT CARD REMOVED, BUT NO RESPONSE.

12/19/2015 7:40 pm Attempted Service: 1094 CORBRIDGE CT, VOORHEES, NJ 08043 NO ANSWER. 1 LIGHT ON BEDROOM LIGHT ON , I SPOKE TO NEIGHBOR (SHOWED HER PICTURE OF STEPHEN BRIGHAM) AT #1095 SHE STATED SHE HASN'T SEEN STEPHEN BRIGHAM FOR OVER A MONTH . I POSTED DOCUMENTS ON FRONT DOOR AND TOOK PHOTO OF IT, ALSO TOOK PHOTO OF #1094'S PARKING SPACE , THAT WAS VACANT.

12/19/2015 8:10 pm Attempted Service: 1094 CORBRIDGE CT, VOORHEES, NJ 08043 NO ANSWER. I STOPPED BACK AT THE PROPERTY THIRTY MINUTES LATER WITH NO CHANGES FROM LAST VISIT. LIGHT STILL ON, BUT NO ACTIVITY AT PROPERTY. DOCS STILL POSTED ON DOOR.

RETURN OF SERVICE For 14-CV-01339-JFM

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is True and correct.



Jeffrey Tobin

STATUS, L.L.C.
1509 Stuyvesant Avenue
Union, NJ 07083
(908) 688-1414

Our Job Serial Number: STS-2015043505
Ref: NA
Service Fee: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Chisty O'Connell

Plaintiff,

v.

Case No. JFM-14-1339

Steven C. Brigham, M.D., et al.

Defendant

AFFIDAVIT OF SERVICE

Service of Process request received on November 19, 2015 at 11:06 a.m. by CLR Top Priority Process Service to be served on Steven C. Brigham, M.D. at the business address of OB/GYN Care, 9801 Georgia Avenue, Suite 338, Silver Spring MD 20902.

I, Kharii Brodie, being duly sworn, depose and say that on 16th day of December, 2015 at 9:00 a.m., I:


INDIVIDUALLY/PERSONALLY served by delivering a true copy of U.S. District Court for Maryland Summons, Case Information Sheet, Complaint, Health Care Alternative Dispute Resolution Office Claim Form, Statement of Claim, Election to Waive Arbitration, Certificate of Qualified Expert, Order of Transfer, Motion to Consolidate with court notice, Order granting Motion to Consolidate with court notice and notice from court case was consolidated with the date and hour of service endorsed herein by me, to: D.B. at the business of: OB/GYN Care, 9801 Georgia Avenue, Suite 338, Silver Spring MD 20902 and informed said person of the contents therein, in compliance with statutes.

Description of Person Served: Age: 35, Sex: F, Race: Hispanic, Height: 5'8", Weight: 145 lbs. Hair: Brownish. Distinct feature: wear glasses

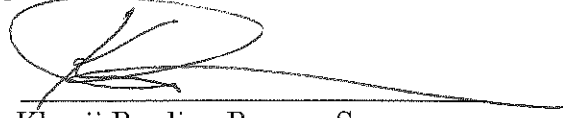
Additional Information: D.B. is Medical Assistant for Steven C. Brigham, M.D. at OB/GYN Care accepted service on behalf of Steven C. Brigham, M.D. Contact information for D.B.: OB/GYN Care, 9801 Georgia Avenue, Suite 338, Silver Spring MD 20902. Phone: (301) 686-8557 and (800) 576-3339. The person referred as D.B. did not give her full name because she stated that she did not want her full name publicly displayed in any legal issues. However, D.B. states that she would fax Steven C. Brigham, M.D. the documents.



1 Manish Thanki
Notary Public State of Maryland
Commission Expires 4/30/18

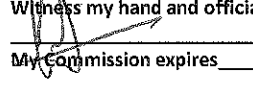


I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief and do further affirm I am competent person over 18 years of age and not a party to the case.



Kharii Brodie - Process Server

CLR Top Priority Process Service
2 Wisconsin Circle, Suite 700
Chevy Chase, MD. 20815
(301) 769-6395
Our Job Serial Number: 13-15218
Ref: Nikki Garner

City/County of MONTGOMERY
Commonwealth/State of MARYLAND
Sworn to and subscribed before me this 17th
Day of DEC 20 15
Witness my hand and official seal.
 Notary Public.
My Commission expires 04/30/2018

Manish Thanki
Notary Public, State of Maryland
Commission Expires 4/30/18