

**Agile Capital Funding LLC v Solar4america Tech.
Inc.**

2026 NY Slip Op 31702(U)

April 17, 2026

Supreme Court, New York County

Docket Number: Index No. 654061/2025

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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AGILE CAPITAL FUNDING LLC,

Plaintiff,

- v -

SOLAR4AMERICA TECHNOLOGY INC., SPI ENERGY
CO., LTD., PHOENIX MOTOR INC., XIOFENG PENG

Defendants.

INDEX NO. 654061/2025

MOTION DATE 01/01/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 41, 42, 43, 44, 45, 46, 47

were read on this motion for ALTERNATE SERVICE.

Plaintiff Agile Capital Funding, LLC (“Plaintiff”) moves, pursuant to CPLR 308(5), for an order to permit alternate service on Defendant SPI Energy Co., Ltd. (“SPI Energy”) and for an additional 120 days to complete service (*see* NYSCEF 25 [“Proposed Order to Show Cause”]). Plaintiff previously moved for and was granted an order to permit alternate service on Defendant Xiaofeng Peng and granting an additional 120 days for service (*see* NYSCEF 17 [Decision and Order on Motion]). For the reasons explained herein, the Plaintiff’s motion is granted in part and denied in part.

SPI Energy is a foreign corporation with no current active U.S. operations or physical presence in New York (NYSCEF 1 [Complaint] ¶ 11; Proposed Order to Show Cause ¶ 9). It is currently in liquidation in the Cayman Islands, with the process being overseen by court-appointed Joint Official Liquidators (“JOLs”), who are represented by attorney Ian Lambert of Broadhurst, LLC (NYSCEF 26 [“Obermeister Affirmation”] ¶¶ 1, 5). SPI Energy has no

current active U.S. operations or physical presence in New York or California, and there is no registered agent or individual available for personal service (Proposed Order to Show Cause ¶ 9).

While CPLR 308(5) vests a court with the discretion to direct an alternative method of service of process when it determines that other methods are impracticable, “personal service on a corporation may only be made pursuant to CPLR 311” (*LTD Trading Enterprises v Vignatelli*, 176 AD2d 571, 571 [1st Dept 1991]; *see also Astrologo v Serra*, 240 AD2d 606, 607 [2d Dept 1997] [denying motion under CPLR 308(5) “since that provision governs service of process upon natural persons, and is inapplicable to corporations”]).

CPLR 311(b) provides that “[i]f service upon a domestic or foreign corporation . . . is impracticable under [CPLR 311(a)], service may be made in such manner, and proof of service may take such form, as the court, upon motion without notice, directs” (CPLR 311[b]). While Plaintiff moved under the wrong provision of the CPLR, the impracticability standards are sufficiently similar that courts have relied on CPLR 308(5) precedent to determine whether service is impracticable under CPLR 311 (*see Greenland Asset Mgt. Corp. v MicroCloud Hologram, Inc.*, 80 Misc 3d 1231(A) *2 n1 [Sup Ct, NY County 2023]). The Court therefore treats Plaintiff’s motion as though it had been brought under CPLR 311(b).

Granting alternate service under CPLR 311(b) requires a threshold showing that service by ordinary methods of service could not be made under the particular circumstances of the case (*Richards v Hedman Resources Ltd.*, 204 AD3d 1407, 1409 [4th Dept 2022]; *Greenland Asset*, 80 Misc 3d 1231(A)). Without any such showing, “a court is without power to direct expedient service” (*Richards*, 204 AD3d at 1409). Plaintiffs must show that service was impracticable under both CPLR 311(a)(1) and Business Corporation Law § 307 before the court can order substituted service (*id.*).

CPLR 311(a)(1) provides for service “upon any domestic or foreign corporation, to an officer, director, managing or general gent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive such service. A business corporation may also be served pursuant to [Business Corporation Law § 307]” (CPLR 311). Business Corporation Law § 307 provides for service on the New York Secretary of State in combination with either personal service or registered mail with return receipt requested (BCL § 307).

Here, the record indicates that SPI Energy has no current active U.S. operations or physical presence in New York or California, and that there is no registered agent or individual available for service. SPI Energy is in official liquidation in the Cayman Islands, with its assets and management fully under the control of the JOLs. SPI Energy’s former officers and directors no longer exercise authority over its affairs; those functions have been assumed by the JOLS pursuant to the Winding Up Order of the Grand Court of the Cayman Islands (NYSCEF 30 [“Winding Up Order”]).

The Court recognizes that the JOLs, Graham Robinson and James Parkinson of Crowe Cayman Ltd., are court-appointed fiduciaries empowered to manage SPI Energy’s affairs and carry on its business insofar as it is necessary for its winding up (*id.* ¶¶ 5, 8–9). They could be regarded as agents of the company for purposes of liquidation, but they are located in Grand Cayman and neither they nor their counsel have consented to accept service of process on behalf of SPI Energy. In fact, Broadhurst LLC assert that any attempt to serve the company, its registered office, the firm or the JOLs would require leave of the Grand Court of the Cayman Islands. Under these circumstances, service on the JOLS through the conventional means under CPLR 311(a)(1) and BCL 307 is impracticable.

“Once the impracticability standard is satisfied, due process requires that the method of service be ‘reasonably calculated, under all the circumstances, to apprise’ the defendant of the action” (*Jean v Csencsits*, 171 AD3d 1149, 1150 [2d Dept 2019]). “In devising appropriate forms of alternate service, courts have wide latitude to fashion means adapted to the particular facts of the case before them” (*Germain v A.O. Smith Water Products Co.*, 41 Misc 3d 1228[A] [Sup Ct, NY County 2013], *affd sub nom. In re New York City Asbestos Litig.*, 116 AD3d 571 [1st Dept 2014] [cleaned up]).

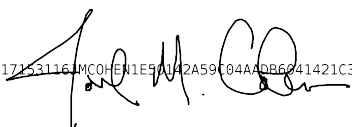
Accordingly, it is

ORDERED that Plaintiff’s motion is **GRANTED**, and Plaintiff may serve SPI Energy by sending the Summons, Complaint, and all related papers by email to counsel and to both of the JOLs identified in the order of the Grand Court of the Cayman Islands (NYSCEF 30):

1. Ian Lambert of Broadhurst LLC at ian@broadhurstllc.com;
2. John Jureller of Klestadt Winters Jureller Southard & Stevens LLP at jjureller@klestadt.com
3. James Parkinson at James.Parkinson@crowe.com
4. Graham Robinson at Graham.Robinson@crowe.com

IT IS ORDERED that Plaintiff shall serve a copy of this Order with Notice of Entry upon SPI as directed above.

This constitutes the Decision and Order of the Court.


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JOEL M. COHEN, J.S.C.

4/17/2026
DATE

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"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE