

Rotondo v Stern

2026 NY Slip Op 31103(U)

March 19, 2026

Supreme Court, New York County

Docket Number: Index No. 652508/2025

Judge: Emily Morales-Minerva

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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: PART 42M

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EUGENE ROTONDO

Plaintiff,

- v -

DANIEL STERN,

Defendant.

INDEX NO. 652508/2025

MOTION DATE 06/10/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT

APPEARANCES:

Robert B. Amidon, A Law Corporation, Valley Village, CA
(Robert Bruce Amidon, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action to enforce a May 09, 2022 judgment issued by
a Nevada Court in favor of plaintiff EUGENE ROTONDO and against
defendant DANIEL STERN, plaintiff moves, by notice of motion
(sequence number 01), pursuant to CPLR § 3213, for summary
judgment in lieu of complaint. Although defendant does not
appear or submit opposition to the motion, the motion must be
denied.

CPLR § 3213 provides that when an action is based upon an
instrument for the payment of money only or a judgment, the
plaintiff may serve, with the summons, a notice of motion for

summary judgment and the supporting papers in lieu of a complaint. Pursuant to CPLR § 3213, "the minimum time such motion shall be noticed to be heard shall be as provided in subdivision (a) of Rule 320 for making an appearance, depending upon the method of service." Therefore, as relevant here, under CPLR § 320 (a), "[a]n appearance shall be made within twenty days after service of the summons, except that if the summons was [] served pursuant to . . . subdivision two, three, four or five of section 308 . . . the appearance shall be made within thirty days after service is complete" (emphasis added).

When a party, like individual defendant here, is served pursuant to CPLR § 308 (4), service of process is complete "ten days after" the affidavit of service is filed with the clerk of the court (CPLR § 308 [4]). Plaintiff filed the affirmation of service (NYSCEF Doc. No. 09) on June 05, 2025, and therefore, service was not complete until ten days after the filing date, or on June 16, 2025.¹

Considering defendant had thirty days from June 16, 2025 -- or until July 16, 2025, to appear in this action -- the notice of motion's return date of June 10, 2025 preceded both completion of service and expiration of defendant's time to appear. Plaintiff's failure to provide defendant sufficient

¹Ten days after the filing date falls on Sunday, June 15, 2025; accordingly, because that date is a Sunday, service was complete on Monday, June 16, 2025.
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advance notice of the motion, as required under CPLR §§ 320 (a) and 3213, is a fatal jurisdictional defect that the Court may not overlook (see Emirates Islamic Bank PJSC v NeoPharma LLC, 84 Misc3d 1217 [A] [Sup Ct NY Cnty 2024]; see also Bhanti v Jha, 140 AD3d 685, 686 [2d Dept 2016]; Segway of N.Y. Inc. v Udit Group, Inc., 120 AD3d 789, 792 [2d Dept 2014], citing Ruffin v Lion Corp., 15 NY3d 578, 583 [2010]; VNB New York, LLC v Hidrock Properties, Inc., 2025 WL 1582536 [Sup Ct NY Cnty 2025]).

Accordingly, it is hereby

ORDERED that the motion for summary judgment in lieu of complaint by plaintiff EUGENE ROTONDO is denied, without prejudice; it is further

ORDERED that the instant action is dismissed, without prejudice;

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, on defendant; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/19/2026

DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE