

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D80948

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Argued - November 21, 2025

CHERYL E. CHAMBERS, J.P.  
DEBORAH A. DOWLING  
LILLIAN WAN  
ELENA GOLDBERG VELAZQUEZ, JJ.

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2022-01759

DECISION & ORDER

Accesslex Institute, etc., appellant, v O-Sun Lee,  
respondent.

(Index No. 706430/21)

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Lacy Katzen LLP, Rochester, NY (Karl E. Kolkman of counsel), for appellant.

O-Sun Lee, Rego Park, NY, respondent pro se.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Queens County (Pam Jackman Brown, J.), entered February 14, 2022. The order, after a hearing to determine the validity of service of process, granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction.

ORDERED that the order is reversed, on the law, with costs, and that branch of the defendant's motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction is denied.

The plaintiff commenced this action against the defendant, inter alia, to recover damages for breach of contract based upon allegedly outstanding amounts owed under certain loan agreements. According to an affidavit of service, the defendant was served on March 26, 2021, by delivery of the summons and complaint to a person of suitable age and discretion, identified as "JANE DOE (REFUSED NAME), FAMILY MEMBER," at a residence located in Rego Park (hereinafter the premises), followed by the required mailing to the same address. The defendant moved, among other things, pursuant to CPLR 3211(a)(8) to dismiss the complaint on the ground

that he was not properly served with process. In support of his motion, the defendant submitted sworn statements in which he averred that he was “never served” at the premises, that he “lives alone” at the premises, and that it “is definitely false” “that service of process was fulfilled through [s]ubstituted [s]ervice.” The plaintiff opposed the defendant’s motion, arguing, inter alia, that the defendant’s denial of service failed to rebut the presumption of proper service created by the process server’s affidavit. After a hearing to determine the validity of service of process, in an order entered February 14, 2022, the Supreme Court determined that the plaintiff failed to establish that the defendant was properly served and granted that branch of the defendant’s motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction. The plaintiff appeals.

“A court lacks personal jurisdiction over a defendant who is not properly served with process” (*Harvey v Usukumah*, 238 AD3d 1007, 1008, quoting *Matter of Lester Korinman Kamran & Masini, P.C. v Davis*, 227 AD3d 906, 907). “Service of process upon a natural person must be made in strict compliance with the methods of service set forth in CPLR 308” (*Matter of Lester Korinman Kamran & Masini, P.C. v Davis*, 227 AD3d at 907). “A process server’s affidavit of service constitutes prima facie evidence of proper service” (*Harvey v Usukumah*, 238 AD3d at 1008 [internal quotation marks omitted], quoting *US Bank N.A. v Meyer*, 229 AD3d 836, 837). “A mere conclusory denial of service is insufficient to rebut the presumption of proper service arising from the process server’s affidavit” (*id.*, quoting *Matter of Rockman v Nassau County Sheriff’s Dept.*, 224 AD3d 758, 759). “To warrant a hearing to determine the validity of service of process, the denial of service must be substantiated by specific, detailed facts that contradict the affidavit of service” (*id.* at 1009, quoting *Matter of Rockman v Nassau County Sheriff’s Dept.*, 224 AD3d at 760).

Here, the process server’s affidavit of service constituted prima facie evidence that the defendant was properly served pursuant to CPLR 308(2) (*see Harvey v Usukumah*, 238 AD3d at 1008; *US Bank N.A. v Meyer*, 229 AD3d at 837; *Washington Mut. Bank v Huggins*, 140 AD3d 858, 859). Contrary to the defendant’s contention, he failed to rebut the presumption of proper service arising from the process server’s affidavit of service. The defendant’s sworn statement submitted in support of his motion contained only conclusory averments that he was not served with process on the date of service and that he lives alone and were not otherwise substantiated by specific facts (*see U.S. Bank Trust, N.A. v Catalano*, 215 AD3d 992, 994; *Berganza v Pecora*, 192 AD3d 743, 744). Furthermore, the additional sworn submissions improperly submitted by the defendant for the first time in reply should not have been considered by the Supreme Court and, thus, were insufficient to rebut the prima facie showing of proper service arising from the process server’s affidavit of service (*see HSBC Bank USA, N.A. v Rahmanan*, 194 AD3d 792, 795; *Deutsche Bank Natl. Trust Co. v Fitzsimmons*, 193 AD3d 913; *Deutsche Bank Natl. Trust Co. v Saketos*, 158 AD3d 610, 612).

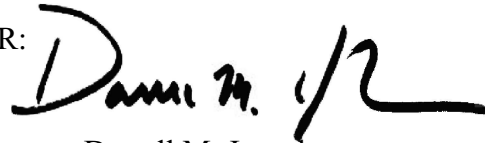
Accordingly, the Supreme Court should have denied that branch of the defendant’s motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction, without conducting a hearing to determine the validity of process (*see Harvey v Usukumah*, 238 AD3d at 1009; *HSBC Bank USA, N.A. v Rahmanan*, 194 AD3d at 795).

The parties’ remaining contentions either are without merit or need not be reached

in light of our determination.

CHAMBERS, J.P., DOWLING, WAN and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a long horizontal flourish.

Darrell M. Joseph  
Clerk of the Court