

**JSBarkats, PLLC v Blustein**

2016 NY Slip Op 31335(U)

June 30, 2016

Supreme Court, New York County

Docket Number: 650837/2015

Judge: Lucy Billings

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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 46

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JSBARKATS, PLLC,

Index No. 650837/2015

Plaintiff

- against -

DECISION AND ORDER

RAPHI BLUSTEIN a/k/a RAPHI BLUSTAIN,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff moves for a default judgment, C.P.L.R. § 3215, to which defendant responds with a cross-motion to dismiss this action based on lack of personal jurisdiction due to inadequate service of the summons and complaint. C.P.L.R. §§ 308(2), 3211(a)(8). Plaintiff's affidavit of service attests that the process server delivered the summons and complaint to a security guard at defendant's place of business at 1 World Trade Center, 285 Fulton Street, in New York County, July 1, 2015. Defendant attests that neither then nor since then has he maintained an office at 1 World Trade Center.

Plaintiff's only rebuttal comprises a webpage identifying defendant as the founder of a business entity at 1 World Trade Center, 285 Fulton Street, Reply Aff. of Susan M. Benjamin Ex. A, and a LinkedIn posting identifying defendant as an attorney who maintains an office in New York, New York. Id. Ex. B. Neither advertisement, however, indicates his office is at 1 World Trade Center. Based on this record, the court grants defendant's

cross-motion to dismiss the action due to plaintiff's failure to serve defendant at his "actual place of business," C.P.L.R. § 308(2), or otherwise as required by C.P.L.R. § 308. C.P.L.R. § 3211(a)(8); 1136 Realty, LLC v. 213 Union St. Realty Corp., 130 A.D.3d 500, 501 (2d Dep't 2015); Pierce v. Village of Horseheads Police Dept., 107 A.D.3d 1354, 1356 (3d Dep't 2013); Selmani v. C City of New York, 100 A.D.2d 861, 861-62 (2d Dep't 2012); Samuel v. Brooklyn Hosp. Ctr., 88 A.D.3d 979, 980 (2d Dep't 2011). See City of New York v. VJHC Dev. Corp., 125 A.D.3d 425, 425 (1st Dep't 2015); Edan v. Johnson, 117 A.D.3d 528, 529 (1st Dep't 2014); Gibson, Dunn & Crutcher v. Global Nuclear Servs. & Supply, 280 A.D.2d 360, 361 (1st Dep't 2001); Wilbyfont v. New York Presbyt. Hosp., 131 A.D.3d 605, 606 (2d Dep't 2015).

This dismissal renders moot plaintiff's motion for a default judgment, which the court therefore denies. In any event, plaintiff fails support its claim for breach of the parties' contract executed January 13, 2014, consummating their oral contract of December 20, 2013. Most fundamentally, plaintiff fails to present the executed contract, AQ Asset Mgt. LLC v. Levine, 128 A.D.3d 620, 621 (1st Dep't 2015); US Bank N.A. v. Lieberman, 98 A.D.3d 422, 423 (1st Dep't 2012); Mastroddi v. WDG Dutchess Assoc. Ltd. Partnership, 52 A.D.3d 341, 342 (1st Dep't 2008); Chubb Natl. Ins. Co. v. Platinum Customcraft Corp., 38 A.D.3d 244, 245 (1st Dep't 2007), let alone authenticate its execution. AQ Asset Mgt. LLC v. Levine, 128 A.D.3d at 621; IRB-Brasil Resseguros S.A. v. Portobello Intl. Ltd., 84 A.D.3d

637, 637-38 (1st Dep't 2011); Babikian v. Nikki Midtown, LLC, 60 A.D.3d 470, 471 (1st Dep't 2009); Bermudez v. Ruiz, 185 A.D.2d 212, 214 (1st Dep't 1992). See Singer Asset Fin. Co., LLC v. Melvin, 33 A.D.3d 355, 357-58 (1st Dep't 2006); Acevedo v. Audubon Mgt., 280 A.D.2d 91, 95 (1st Dep't 2001); People v. Bryant, 12 A.D.3d 1077, 1079 (4th Dep't 2004); Fields v. S & W Realty Assoc., 301 A.D.2d 625 (2d Dep't 2003). Nor does plaintiff specify what legal services it rendered in performance of the contract; how defendant breached a fiduciary duty in violation of the contract; or how he breached the contract by generating insufficient income during the first six months of the contract's term, when plaintiff nowhere shows a contractual requirement that defendant generate income during that period. Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 181-82 (2011); High Tech Enters. & Elec. Servs. of N.Y., Inc. v. Expert Elec., Inc., 113 A.D.3d 546, 547 (1st Dep't 2014); Harris v. Seward Park Hous. Corp., 79 A.D.3d 425, 426 (1st Dep't 2010). See Forty Cent. Park S., Inc. v. Anza, 130 A.D.3d 491, 492 (1st Dep't 2015).

Nevertheless, the dismissal of this action is without prejudice to a future timely and adequately supported action for breach of the contract. Moreover, while the prior action between the parties pending in Israel is not a basis for the dismissal here, as C.P.L.R. § 3211(a)(4) provides for dismissal only when another action is pending within the United States, plaintiff may

pursue its counterclaims for breach of a contract in that action in Israel.

DATED: June 30, 2016

*Lucy Billings*

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**LUCY BILLINGS  
J.S.C.**