

**Hex v Kidd**

2024 NY Slip Op 34823(U)

July 19, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 607930/2024

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

INDEX No. 607930/2024  
CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 06/27/2024  
SUBMIT DATE 06/27/2024  
Mot. Seq. # 02 - MD

-----X		
ALEX HEX,		<b>ALEX HEX</b>
	Plaintiff,	<i>Pro Se Plaintiff</i>
		1401 Blair Mill Road, Apt. 1124
		Silver Spring, MD 20910
	-against-	
CHRIS KIDD,		<b>CHRIS KIDD</b>
	Defendant.	<i>Pro Se Defendant</i>
		46 Holbrook Road
		Holbrook, NY 11741
-----X		

Upon the following papers read on this motion for default judgment; e-filed on the NYSCEF system as documents 14 & 16; it is,

**ORDERED** that this motion by plaintiff for an order directing that a default judgment be entered against the defendant is denied in all respects.

To establish his entitlement to a default judgment, the plaintiff is required to submit proof of service of the summons and the complaint, of the facts constituting the claim, and of the default (*Miterko v Peaslee*, 80 AD3d 736, 736-737, 915 NYS2d 314 [2d Dept 2011], citing CPLR 3215 [f]; *Levine v Forgotson's Cent. Auto & Elec., Inc.*, 41 AD3d 552, 553, 840 NYS2d 598 [2007]; **599 Ralph Ave. Dev., LLC v 799 Sterling Inc.**, 34 AD3d 726, 825 NYS2d 129 [2006]). The Court notes that plaintiff only filed a notice of motion in this instance, without any supporting papers.

CPLR § 306 states:

- (a) Generally. Proof of service shall specify the papers served, the person who was served and the date, time, address, or, in the event there is no address, place and manner of service, and set forth facts showing that the service was made by an authorized person and in an authorized manner.
- (b) Personal service. Whenever service is made pursuant to this article by delivery of the summons to an individual, proof of service shall also include, in addition to any other requirement, a description of the person

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to whom it was so delivered, including, but not limited to, sex, color of skin, hair color, approximate age, approximate weight and height, and other identifying features.

(c) Other service. Where service is made pursuant to subdivision four of section three hundred eight of this chapter, proof of service shall also specify the dates, addresses and the times of attempted service pursuant to subdivisions one, two or three of such section.

(d) Form. Proof of service shall be in the form of a certificate if the service is made by a sheriff or other authorized public officer, in the form of an affidavit if made by any other person, or in the form of a signed acknowledgement of receipt of a summons and complaint, or summons and notice or notice of petition as provided for in section 312-a of this article.

CPLR § 308 states:

Personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or
2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318, except in

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matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

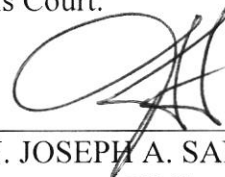
Document 9 on the e-filing system is an "Affidavit of Service by Mail" indicating that defendant Chris Kidd was served with the summons and complaint by certified mail, however, this fails to meet the requirements for service of a summons and complaint.

While the failure to file a timely proof of service is a curable procedural irregularity, here, the plaintiff did not file appropriate proof of service with the Court and accordingly, the defendants time to answer never began to run (see *Bank of New York v Schwab*, 97 AD2d 450, 467 NYS2d 415 [1983]; *Marazita v Nelbach*, 91 AD2d 604, 456 NYS2d 423 [1982]). Since the defendant never defaulted, the plaintiff's motion pursuant to CPLR 3215 for leave to enter judgment against him is denied (see *Zareef v. Wong*, 61 A.D.3d 749, 749-750, 877 N.Y.S.2d 182, 183 (2d Dept 2009); citing *Hausknecht v Ackerman*, 242 AD2d 604, 606, [750] 662 NYS2d 567 [1997]; *Paracha v County of Nassau*, 228 AD2d 422, 643 NYS2d 637 [1996]; *Rosato v Ricciardi*, 174 AD2d 937, 571 NYS2d 633 [1991]).

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The foregoing constitutes the decision and Order of this Court.

Dated: July 19, 2024



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HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION