

**American Express Travel Related Servs. Co., Inc. v
J&A Homes LLC**

2025 NY Slip Op 31480(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 659737/2024

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
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

Plaintiff,

INDEX NO. 659737/2024

MOTION DATE 06/09/2025

MOTION SEQ. NO. 001

- v -

J & A HOMES LLC,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Jaffe and Asher, New York, NY (Lawrence M. Nessenson, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this breach of contract action, plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., moves, by notice of motion (seq. no. 001), for an order, pursuant to CPLR § 3215, granting it a default judgment against corporate defendant J & A HOMES LLC. Defendant does not appear or submit opposition.

As explained below, the Court dismisses the motion.

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]"

(CPLR § 3215 [a]). Among other things, to succeed on a motion for a default judgment, the proponent of such application must file proof of service of the summons and complaint on the defaulting party (see CPLR § 3215 [f]).

It is black letter law that, as defendant J & A HOMES, LLC, is a limited liability corporation, "[p]ersonal service upon [it] . . . shall be made by delivering the summons . . . to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service" on its behalf (CPLR § 311 [a] [1]). Since the statute requires "actual delivery to the proper person [authorized to receive process for the corporation], delivery to a corporate employee not listed in CPLR 311 (subd 1) will not normally provide personal jurisdiction over the defendant corporation" (Fashion Page, Ltd. v Zurich Ins. Co., 50 NY2d 265, 274 [1980]; see also generally Phipps SC, LLC v Carvajal, 2025 NY App Div LEXIS 1270, 2025 NY Slip Op 01302 [1st Dept 2025] [relying on Fashion Page, 50 NY2d at 273, in determining proper service pursuant to CPLR 308 (2)]; see also Matter of Jiggetts v MTA Metro-N.R.R., 121 AD3d 414, 414 [1st Dept 2019] [providing that CPLR 311 (a) (1) requires that the process server tender process directly to an authorized corporate representative]).

Here, plaintiff's affidavit of service does not purport to have effectuated service on "an officer, director, managing or general agent, or cashier or assistant cashier" of defendant J & A HOMES, LLC. Instead, the affidavit of service avers that the process server delivered "the documents" to a "REGISTERED AGENT" who is unnamed in the affidavit and who is described therein only as an "individual appear[ing] to be a bald white male contact 45-55 years of age, 6'0"-6'2" tall, and weighing 200-240 lbs" (NYSCEF Doc. No. 002, Affidavit of Service, dated December 24, 2024 [emphasis in original]).

While the affiant avers "REGISTERED AGENT with identity confirmed by subject stating their name," such language does not equate to an affirmation that the affiant knew the person who received the summons and complaint to be an "agent authorized by appointment or by law to receive service" on behalf of J & A HOMES, LLC (CPLR § 311 [a] [1]; see also Banks v New York City Tr. Auth., 216 AD3d 449, 449 [1st Dept 2023] [finding an affidavit of service insufficient to establish service on a corporation, pursuant to CPLR 311 [a] [1], where the affidavit failed to "mention any individual" and "plaintiff's counsel's affirmation in support merely aver[ed] in a conclusory fashion that the individual was authorized to accept service on behalf of the corporation]). On its face, this statement also is no affirmation that the person held themselves out to be authorized

to receive service of the summons and complaint for purposes of this Court acquiring personal jurisdiction over defendant J & A HOMES, LLC.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

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

04/21/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: