

Rosen v Egnatz

2025 NY Slip Op 31755(U)

May 8, 2025

Supreme Court, New York County

Docket Number: Index No. 659873/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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CLIFFORD A. ROSEN, RONALD A. CHRISTENSEN

Plaintiff,

- v -

CHARLES BRIAN EGNATZ,

Defendant.

-----X

INDEX NO. 659873/2024

MOTION DATE 01/02/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, this motion is decided as follows. Plaintiffs Ronald A. Christensen and Clifford A. Rosen (collectively, "plaintiffs") move for a summary judgment in lieu of complaint pursuant to CPLR 3213. Plaintiffs seek to enforce a judgment for \$625,000 entered in Central District of California dated July 14, 2024 (the "California Judgment"). Defendant Charles Brian Egnatz ("defendant" or "Egnatz") opposes and cross-moves to dismiss, arguing that this Court lacks personal jurisdiction because service upon defendant was not properly effectuated. For the reasons that follow, defendant's cross motion to dismiss is granted and plaintiffs' motion for summary judgment is denied.

Facts

The relevant facts are as follows. On July 14, 2024, the California Judgment was entered by the clerk of the court in the Central District of California in favor of plaintiffs and against several defendants, jointly and severally, including Egnatz, in the amount of \$625,000.

On December 23, 2024, plaintiffs filed their motion for summary judgment in New York seeking to enforce the California Judgment. On January 6, 2025, Nicholas Aaron Granados (the

“Process Server”) went to defendant’s place of residence at 43 W. 64th Street, New York, NY 10023 (“Defendant’s Residence”).

Constantin Bogdan Opre (“Opre”) is currently employed as a doorman at the Defendant’s Residence and was working in the lobby when the Process Server attempted to serve the defendant. Opre testified that on January 6, 2024, a man, purportedly the process server, entered the lobby and asked if Egnatz was home. Opre then called Egnatz’ apartment and defendant’s wife answered the phone, informing Opre that defendant was not home. Opre told the man that Egnatz was not home and, according to Opre, “the man said nothing, placed a stack of papers on the lobby desk, and promptly left the lobby.” Opre gave the service papers to defendant’s wife later that evening.

According to the Affirmation of Service, the Process Server completed service at the Defendant’s Residence by “delivering thereat a true copy of each to Bolton "Doe" (Refused to Give Last Name) (Concierge - refused server access to apartment)” on January 6, 2024, as well as mailing copy on January 7, 2024.

Discussion

Pursuant to CPLR 308(2), service may be made upon a natural person “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”.

Dwelling place or usual place of abode are both understood to mean “last known residence” of the defendant (*Feinstein v Bergner*, 48 NY2d 234, 239 [1979]). The lobby of an apartment building where the defendant dwells is not considered to be “at the actual dwelling place” of the defendant unless “a process server is barred from the actual apartment by a doorman or other employee”, in which case the dwelling place is “deemed to extend to

the location at which the process server's progress is arrested" (*F. I. duPont, Glore Forgan & Co. v Chen*, 41 NY2d 794, 794-95 [1977]). Whether or not the process server was denied access to the apartment is a determinative factor of whether the service was properly effectuated pursuant to CPLR 308(2) (*compare Wells Fargo Bank, N.A. v Ferrato*, 150 AD3d 546, 547 [1st Dept 2017], *with Bank of Am., N.A. v Grufferman*, 117 AD3d 508, 508 [1st Dept 2014]).

The parties in the current action do not dispute the facts of the case, rather they disagree on "whether the doorman's telling the Process Server that the Defendant was not home constituted the doorman denying the Process Server access to the apartment". Neither the plaintiffs nor the affirmation of service alleges that the process server asked permission to access the apartment. Plaintiffs do not dispute Opre's testimony that after informing the Process Server Egnatz was not home, the Process Server simply left the papers with the doorman without saying another word. The Process Server did not ask permission to go to the apartment, in which case he could have left the papers with defendant's wife, a person of suitable age and discretion.

Because the Process Server never asked permission to go the apartment, he was never denied access (*see McCormack v Goldstein*, 204 AD2d 121, 122 [1st Dept 1994] [action was properly dismissed for lack of personal jurisdiction where when process server never asked doorman permission to enter the building and was not barred from proceeding to the defendant's apartment]). Based on the foregoing, service was not properly made pursuant to CPLR 308(2), and the action must be dismissed for lack of personal jurisdiction over the defendant.

Conclusion

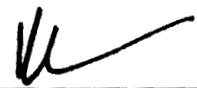
Accordingly, it is hereby

ORDERED that defendants' cross-motion to dismiss is granted; and it is further

ORDERED that plaintiffs' motion for summary judgement is denied as moot; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>5/8/2025</u> DATE			 LYNN R. KOTLER, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE