

DeWald v Riegel

2025 NY Slip Op 31937(U)

May 29, 2025

Supreme Court, New York County

Docket Number: Index No. 655512/2023

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

INDEX NO. 655512/2023

JEROME DEWALD,

MOTION DATE 01/12/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

DEBORAH RIEGEL, ESQ., and ROSENBERG & ESTIS, P.C.,

DECISION + ORDER ON MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of April 11, 2025, Defendants Deborah Riegel, Esq. ("Ms. Riegel") and Rosenberg & Estis, P.C.'s ("Rosenberg & Estis") (collectively "Defendants") motion to dismiss Plaintiff Jerome DeWald ("Plaintiff") Complaint pursuant to CPLR 3211(a)(1), (a)(7), (a)(8), and (g), and seeking fees pursuant to 12 NYCRR 130-1.1 and New York Civil Rights Law § 70-a(1) is granted in part and denied in part.¹

Plaintiff, who is self-represented, sues Defendants for defamation and intentional infliction of emotional distress for statements allegedly made by Ms. Riegel to the New York Post alleging that Plaintiff has not paid rent for four years and claiming Plaintiff is violating a no-pet policy by living with a beagle named Ricky. Defendants are representing Plaintiff's landlord, S&P Associates of New York LLC, in a separate action where Plaintiff was sued for allegedly renting out his apartment on Airbnb in violation of his lease and New York City Local Law 18. Defendants move to dismiss Plaintiff's Complaint on numerous grounds.

¹ This case was transferred to Part 33 from Part 31 on February 18, 2025.

Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(8) is granted. Plaintiff claims he served Ms. Riegel pursuant to CPLR 308(2). That provision provides person service upon a natural person shall be made 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....proof of service shall identify such person of suitable age and discretion and state the date, time and place of service...”

The affidavit of service fails to state that the summons was delivered to a person of suitable age and discretion and instead states that Ms. Riegel was purportedly served by mailing the verified complaint to Ms. Riegel's business address (NYSCEF Doc. 7). Service under CPLR 308(2) is known as “Deliver-and-Mail” service and requires both in-person delivery and mailing to be complete – if the summons is only mailed, service under CPLR 308(2) has not been effectuated. The mandates of CPLR 308(2) are to be strictly construed, and the failure to properly follow CPLR 308(2)'s procedure constitutes a jurisdictional defect (*AMK Capital Corp. v Plotch*, 230 AD3d 26, 31 [1st Dept 2024] citing *Williams v MTA Bus Co.*, 224 AD3d 467, 468 [1st Dept 2024]). Because the affidavit of service only states that mailing occurred, but not delivery, the requirements under CPLR 308(2) have not been met, and this Court has no jurisdiction over Ms. Riegel. Moreover, the affidavit of service is defective because it fails to state that the envelope mailed to Ms. Riegel bore the legend “personal and confidential.” In his opposition papers, Plaintiff reiterates, in fatal fashion, that the summons was only mailed, and it was never delivered. Therefore, Plaintiff's

Complaint against Ms. Riegel is dismissed for failure to properly serve her (*see also Phipps SC, LLC v Carvajal*, 236 AD3d 446, 446 [1st Dept 2025]; *Owens v Braun*, 231 AD3d 487, 487 [1st Dept 2024]).

Plaintiff also failed to effectuate service on Rosenberg & Estis pursuant to CPLR 312-a. That provision allows for service by first-class mail but requires two copies of a statement of service by mail and acknowledgment of receipt, with a return envelope, postage prepaid, addressed to the sender to be included. Nowhere in the affidavit of service does it reflect that a return envelope with postage prepaid addressed to Plaintiff was included, nor is there any evidence of an acknowledgement of receipt by Rosenberg & Estis (*see also Jiggetts v MTA Metro-N. R.R.*, 121 AD3d 414, 414-415 [1st Dept 2014]).

Nor does the affidavit of service comply with CPLR 311(a)(1), which requires service directly on an authorized corporate representative. The affidavit of service merely states a copy of the verified complaint was mailed to Rosenberg & Estis's business address, which is insufficient (*see also Goldmark v Keystone & Grading Corp.*, 226 AD2d 143, 144 [1st Dept 1996]). Therefore, the Complaint is dismissed against both Defendants for lack of personal jurisdiction. Although Plaintiff asks the Court for leave to correct any mistake with service, the request is buried in his motion papers and not included in a formal notice of motion or cross-motion, and therefore the Court will not entertain it as it violates CPLR 2214 and 2215 (*see also Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443-44 [1st Dept 2024] citing *Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2d Dept 2018]; *see also Arriaga v Laub Co.*, 233 AD2d 244, 245 [1st Dept 1996]).

Because the Court dismisses Plaintiff's Complaint pursuant to CPLR 3211(a)(8), as this Court does not have jurisdiction over Defendants, the Court need not reach Defendants' other grounds for dismissal. Therefore, the motion to dismiss pursuant to CPLR 3211(a)(1), (a)(7), and

(g) are denied as academic. Because there is no adjudication in favor of Defendants under CPLR 3211(g), Defendants' request for attorneys' fees under New York Civil Rights Law § 70-a(1) is denied. Finally, in an exercise of its discretion, the Court denies Defendants' request for sanctions against the self-represented Plaintiff under 12 NYCRR 130-1.1. Although Plaintiff is involved in several cases, he is self-represented and the Court believes it would be an abuse of discretion to award Defendants sanctions against him, especially because this litigation was not protracted and resolved on a rather simple motion to dismiss.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(8) is granted, and Plaintiff's Complaint is hereby dismissed; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(1), (a)(7), and (g) are denied as academic; and it is further

ORDERED that Defendants' motion for fees and damages against Plaintiff pursuant to 12 NYCRR 130-1.1 and New York Civil Rights Law § 70-(a)(1) is denied; and it is further

ORDERED that within ten days of entry, Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/29/2025
DATE

Mary V. Rosado, J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: