

Empire LLC v Juns Diamonds Inc.

2025 NY Slip Op 33280(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 152092/2024

Judge: Emily Morales-Minerva

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M
Justice

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EMPIRE LLC, INDEX NO. 152092/2024
Plaintiff, MOTION DATE 06/29/2025
MOTION SEQ. NO. 001

JUNS DIAMONDS INC., YON SEK JUN DECISION + ORDER ON MOTION
Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21
were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., New York, NY (David Barry Rosenbaum, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff EMPIRE LLC moves, by notice of motion (seq. no. 001), for an order, pursuant to CPLR § 3215, granting it a default judgment against defendants JUNS DIAMONDS INC. (Juns Diamonds) and YON SEK JUN (Yon Sek Jun). Defendants do not appear or submit opposition.

As explained below, the Court dismisses the motion.

ANALYSIS

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]). Generally, the proponent of a default judgment shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]).

DEFENDANT YON SEK JUN

CPLR § 313 permits an out-of-state person to be personally served "in the same manner as service within the state." It is black letter law that, as defendant YON SEK JUN is a natural person residing in New Jersey, "personal service . . . shall be made by . . . delivering the summons within the state to the person to be served; or 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 . . .

at his or her actual place of business . . . Proof of service shall identify such person of suitable age and discretion and state the date, time and place of service . . .” (CPLR § 308 [1]; [2]).

“The process server must perform a proper inquiry to determine the defendant’s actual place of business, dwelling place, or usual place of abode, which under CPLR § 308 must be correct” (Everbank v Kelly, 203 AD3d 138, 147 [2d Dept 2022]). Courts have held that a proper inquiry consists of inquiring of the person of suitable age and discretion as to whether defendant lives or works at the service address (id.); or by conducting a search of the Department of Motor Vehicle records to determine defendant’s address (Fontanez v PV Holding Corp., 182 AD3d 423 [1st Dept 2020]).

Here, the affidavit of service avers that plaintiff’s process server served Yon Sek Jun at “336 Village Court, Fort Lee, NJ 07024” by delivering a copy of the summons and complaint to “Regina (Doe) (Refused Full Name), Girlfriend”, a person of suitable age and discretion (NYSCEF Doc. No. 004, Affidavit of Service). However, the affidavit of service is silent as to whether plaintiff’s process server performed a proper inquiry to determine whether said premises was Yon Sek Jun’s “dwelling place or usual place of abode”, by either inquiring with “Regina Doe” or conducting a search of the records of the Department of

Motor Vehicles (see id.). Therefore, without any factual or evidentiary support demonstrating that "336 Village Court, Fort Lee, NJ 07024" is Yon Sek Jun's dwelling place or usual place of abode, service of process pursuant to CPLR § 308 (2) is defective.

Absent proper service of process, the court lacks jurisdiction over Yon Sek Jun, and the motion (seq. no. 001) for a default judgment against Yon Sek Jun is dismissed.

DEFENDANT JUNS DIAMONDS INC.

It is black letter law that, as defendant JUNS DIAMONDS is a New York corporation, "personal 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]; see also BCL § 306). 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 [1st Dept 2025] [relying on Fashion Page,

50 NY2d at 273, in determining proper service]; Matter of Jiggetts v MTA Metro-N.R.R., 121 AD3d 414, 414 [1st Dept 2014] [providing that CPLR § 311 (a)(1) requires that the process server tender process directly to an authorized corporate representative]).

Here, while plaintiff's affidavit of service purports to have effectuated service on a manager of Juns Diamonds (NYSCEF Doc. No. 003 [noting that service was effectuated upon "Jun (Doe) (refused full name), Manager"]), the affidavit of service provides Juns Diamonds address as "37 West 47th Street, Room 1427, New York, NY 10036", while the complaint (NYSCEF Doc. No. 001) and lease (NYSCEF Doc. No. 10) identifies the address as "37 West 47th Street, Room 1202, New York, NY 10036" (emphasis added). Though plaintiff submits the affirmation of Alan Abramson, identified only as "member of plaintiff", which provides that, "upon information and belief", Juns Diamonds moved into Room 1427 upon its eviction from Room 1202, this does not constitute personal knowledge of Jun Diamond's change of address (see NYSCEF Doc. No. 07, Affirmation of Alan Abramson; see also Welz v Brown, 228 AD3d 416, 418 [1st Dept 2024] [holding that "CPLR § 3215 does not contemplate that default judgments are to be rubber stamped once jurisdiction and a failure to appear have been shown"])).

Further, plaintiff submits an affidavit of service of the instant motion (seq. no. 001) upon Juns Diamonds, which purports to have served Juns Diamonds "care of Yon Sek Jun" at "336 Village Court, Fort Lee, NJ 07024", Yun Sek Jun's alleged address (see NYSCEF Doc. No. 21, Affidavit of Service of motion). Though plaintiff was not required to serve the instant motion upon Juns Diamonds (see CPLR § 3215 [g] [1]), this further adds to the confusion surrounding the proper address for Juns Diamonds. Based on these inconsistencies, and the conclusory statements herein, plaintiff's motion (seq. no. 001) for a default judgment against Juns Diamonds is denied.

Accordingly, it is hereby ORDERED

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

ORDERED that plaintiff shall re-make the motion upon proper papers within ninety (90) days of the date of this order; it is further

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

9/2/2025

Emily Morales-Minerva

DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE