

**247 W. 30th St. Assoc. LLC v Juntikka**

2025 NY Slip Op 34735(U)

December 4, 2025

Supreme Court, New York County

Docket Number: Index No. 651002/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M**

*Justice*

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247 WEST 30TH STREET ASSOCIATES LLC,

Plaintiff,

- v -

CHARLES W. JUNTIKKA,

Defendant.

-----X

INDEX NO. 651002/2025

MOTION DATE 04/07/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for JUDGMENT - DEFAULT.

**FACTUAL BACKGROUND**

This action arises from an alleged personal guaranty executed by defendant Charles W. Juntikka in connection with a commercial lease for the 12th-floor premises at 247 West 30th Street, New York, New York. Plaintiff alleges outstanding rent, additional rent, late fees, and attorneys' fees totaling \$150,242.09 as of the filing of the complaint, with additional sums accruing thereafter.

Plaintiff filed its Summons and Complaint on February 20, 2025. Affidavits of service reflect substituted service at Defendant's residence on February 28, 2025, and at Defendant's business premises on March 4, 2025, with follow-up mailings. Plaintiff moved for a default judgment based on Defendant's alleged failure to timely appear.

Defendant opposes, asserting that his April 9, 2025 answer was timely under CPLR 3012(c), given that service under CPLR 308(2) is complete ten days after filing of the affidavits of service.

Defendant also cross-moves pursuant to CPLR 3211(a)(8), asserting improper service at both his residence and business, supported by his own sworn affidavit describing the alleged inaccuracy of the process server's descriptions and asserting that no person matching those descriptions was served.

Plaintiff opposes the cross-motion, relying on the affidavits of service, which it contends establish prima facie service, and characterizing Defendant's denials as conclusory. Defendant replies, reiterating his detailed factual denials of service.

### LEGAL STANDARD

When a defendant fails to appear or answer, a plaintiff may seek a default judgment against that defendant (CPLR 3215 [a]). "On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing" (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

Pursuant to CPLR 3211 (a)(8), plaintiffs must demonstrate the basis for personal jurisdiction over defendants. (*Hopstein v. Cohen*, 143 AD3d 859, 860, [2d Dept. 2016]). If a defendant sufficiently challenges personal jurisdiction through the presentation of competent evidence, the plaintiff must then present facts which sufficiently demonstrate that personal jurisdiction is proper pursuant to CPLR 301 or 302. (*see Fischbarg v. Doucet*, 9 NY3d 375, 381, [2007]).

## DISCUSSION

### *Plaintiff's Motion for Default Judgment*

Here, Plaintiff cannot satisfy the third element requiring default of CPLR 3215 because Defendant appeared and filed an Answer on April 9, 2025. The affidavits of service were filed on March 3 and March 5, 2025; therefore, under CPLR 308(2), service was complete ten days later (March 13 and March 15, respectively). Pursuant to CPLR 3012(c), Defendant then had 30 days to answer. His April 9 filing was therefore timely. Because timely appearance negates default as a matter of law, Plaintiff is not entitled to relief under CPLR 3215, and its motion is denied.

### *Defendant's Cross-Motion to Dismiss for Lack of Personal Jurisdiction*

Plaintiff relies on two affidavits of service: one asserting substituted service at Defendant's residence on February 28, 2025, and the other asserting substituted service at Defendant's business premises on March 4, 2025. Each affidavit identifies the date and time of service, the physical description of the individual allegedly served, and a subsequent mailing of the summons and complaint. Therefore, Plaintiff has met its prima facie burden of proper service sufficient to support jurisdiction unless contradicted by a sworn, fact-specific denial.

Defendant, in turn, fails to rebut that service was proper through a presentation of competent evidence. Defendant submits a detailed affidavit asserting that: (1) residential service was impossible and (2) that service at his business was not effectuated. Defendant states that residential service was impossible because he claims that no one was present in his apartment at the time of the alleged service, and no individual remotely matching the description in the affidavit of service lives or works there. Defendant states that service at his business was not effectuated because he argues that he is the only person in his office matching the description of

the person allegedly served, and that he was not given any documents. He asserts that surveillance footage shows only that papers were slid through a door slot.

Defendant, in turn, fails to rebut that service was proper through a presentation of competent evidence. Defendant submits a detailed affidavit asserting that: (1) residential service was impossible and (2) that service at his business was not effectuated. Defendant states that residential service was impossible because he claims that no one was present in his apartment at the time of the alleged service, and no individual remotely matching the description in the affidavit of service lives or works there. Defendant states that service at his business was not effectuated because he argues that he is the only person in his office matching the description of the person allegedly served, and that he was not given any documents. He asserts that surveillance footage shows only that papers were slid through a door slot.

However, even accepting Defendant's sworn statements as true for purposes of this motion, they do not sufficiently rebut the presumption of proper service. A sworn denial of receipt will only defeat the presumption of valid service where it contains specific facts that directly contradict the process server's account in a manner that, if true, would render service impossible. Mere assertions that no one matching the described recipient was present, or that the defendant personally did not receive papers, do not, standing alone, overcome the prima facie effect of a duly executed affidavit of service.

Defendant's assertions that he was not handed the documents, that no one in his residence matched the description given by the process server, and that the papers may have been slid through a door slot do not establish that substituted service under CPLR 308(2) was improper. That provision allows service on a person of suitable age and discretion at the defendant's dwelling or business, followed by first-class mailing. It does not require personal delivery to the

defendant, nor does it require that the individual served be identified by name or be employed by, or related to, the defendant.

Here, Plaintiff has produced affidavits that describe the individual served at each location, the corresponding mailing, and the process server's compliance with CPLR 308(2). Defendant's statements do not demonstrate that no such person existed, nor do they refute that the mailing requirement was satisfied. Indeed, Defendant's ability to timely answer the complaint tends to confirm that service was effectuated, further undermining his jurisdictional challenge.

Thus, Defendant's affidavit does not meet the threshold showing required to rebut the presumption of valid service or to shift the burden back to Plaintiff to produce additional evidence, such as testimony from the process server. Accordingly, Defendant has not presented competent evidence sufficient to rebut the presumption of proper service, and Defendant's jurisdictional challenge fails as a matter of law, and the cross-motion to dismiss is denied.

The court has considered the remaining arguments of the parties and finds such unavailing. Accordingly, it is hereby;

ORDERED the Plaintiff's motion for default judgment against Defendant is denied; and it is further

ORDERED that Defendant's cross motion to dismiss is denied.

The foregoing constitutes the decision and order of the court.


12/4/2025  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  GRANTED IN PART  SUBMIT ORDER

CHECK IF APPROPRIATE:  SETTLE ORDER  FIDUCIARY APPOINTMENT  REFERENCE

INCLUDES TRANSFER/REASSIGN

  
LESLIE A. STROTH, J.S.C.