

**A. Fishman & Son Jewelry, Inc. v Gemkraft
Jewelers.com Corp.**

2026 NY Slip Op 30505(U)

February 6, 2026

Supreme Court, New York County

Docket Number: Index No. 659429/2024

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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INDEX NO. 659429/2024

A. FISHMAN & SON JEWELRY, INC.,

MOTION DATE 01/13/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

GEMKRAFT JEWELERS.COM CORP., RAM J RAVIV

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISSAL.

In the instant action, Plaintiff alleges that it consigned diamonds, valued at \$62,968.30, to Defendant Gemkraft Jewelers.com Corp., pursuant to a written memorandum between the parties. Plaintiff asserts that it demanded that the diamonds be returned, and that Defendant Gemkraft failed to do so. Plaintiff further alleges that Defendant Ram J. Raviv ("Raviv") and Plaintiff entered into a letter agreement, in which Defendant Raviv agreed to pay Plaintiff \$40,000 for the unreturned diamonds, and that Defendant Raviv never made any payments pursuant to the letter agreement.

Defendant Raviv, self-represented, now moves to dismiss pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. Defendant Raviv asserts that service was improper, and that he has not conducted sufficient activities in New York for this court to exercises personal jurisdiction pursuant to CPLR 302(a)(1).

Pursuant to CPLR 3211(a)(8), the plaintiff must demonstrate the basis for personal jurisdiction over defendants (*Hopstein v Cohen*, 143 AD3d 859, 860 [2d Dept 2016]). To prevail on a motion to dismiss based on lack of personal jurisdiction, the plaintiff need only make a

prima facie showing that personal jurisdiction exists (*Aybar v US Tires & Wheels of Queens, LLC*, 211 AD3d 40, 49 [2d Dept 2022]). However, a motion to dismiss for lack of personal jurisdiction will be granted when service of process upon the defendant is improper (*Maccia v Russo*, 67 NY2d 592, 595 [1986], citing *Feinstein v Bergner*, 48 NY2d 234, 241 [1979]). When considering the motion, the facts alleged in the complaint and affidavits in opposition are deemed true and construed in the light most favorable to the plaintiff (*Fanelli v Latman*, 202 AD3d 758, 759 [2d Dept 2022]).

A. Personal Jurisdiction Under CPLR 302(a)(1)

Under New York's long-arm statute, a court may exercise personal jurisdiction over any non-domiciliary who transacts business within the state (*see* CPLR 302 [a][1]). "Transacting business" is a fact-based determination, requiring the activity of the non-domiciliary to be purposeful and to have "a substantial relationship between the transaction and the claim asserted" (*see Paterno v Laser Spine Institute*, 24 NY3d 370, 376 [2014], quoting *Fischbarg v Doucet*, 9 NY3d 375 [2007]). A purposeful transaction is one in which the non-domiciliary "avails itself of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws" (*id.*). "[P]roof of one transaction in New York is sufficient to invoke jurisdiction" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]).

The complaint alleges that Defendant Raviv personally transacted business in New York when he signed the letter agreement, agreeing to pay Plaintiff the sum of \$40,000 for the unreturned diamonds. The affirmation of Joshua Fishman affirms that Defendant Raviv signed the letter agreement in his office at 580 Fifth Avenue Suite 402, New York, New York. Therefore, this Court has long arm jurisdiction over Defendant Raviv.

B. Service of Process

“Service of process upon a natural person must be made in strict compliance with the statutory methods of service set forth in CPLR 308” (*FV-1, Inc. v Reid*, 138 AD3d 922, 923 [2d Dept 2016]). “A defendant’s eventual awareness of pending litigation will not affect the absence of jurisdiction over him or her where service of process is not effectuated in compliance with CPLR 308” (*Washington Mut. Bank v Murphy*, 127 AD3d 1167, 1174 [2d Dept 2015]).

“Ordinarily, the affidavit of a process server constitutes prima facie showing of proper service” (*FV-1, Inc. v Reid*, 138 AD3d at 923). “However, a sworn denial of service containing specific facts generally rebuts the presumption of proper service established by the process server’s affidavit, and necessitates an evidentiary hearing” (*Deutsch Bank Natl. Trust Co. v DaCosta*, 97 AD3d 630, 631 [2d Dept 2012]).

Here, Plaintiff provides an affidavit of service, which asserts that Defendant Raviv was served by delivering the summons and complaint to a person of suitable age and discretion at his purported residence in Forest Hills, New York. The 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.

In opposition, defendant submits an affirmation asserting that he was never served because he does not reside in the Forest Hills, New York residence and he has been a resident of Florida since 2020. Specifically, Defendant asserts that he resides at 17475 Collins Avenue, Unite 2002, Sunny Isles Beach, Florida 3316. Defendant also presents the court with a copy of his Florida driver’s license and an affidavit of his mother, asserting that she resides in the Forest

Hills residence and her son, Defendant Raviv, lives in Florida and has not stayed overnight at the Forest Hills residence in over ten years.

Following the filing of Defendant Raviv’s opposition, Plaintiff submitted a second affidavit of service, which asserts that Defendant Raviv was served at his Florida residence by substitute service pursuant to CPLR 308(4), commonly referred to as “nail and mail service.” “Nail and mail” service may only be used when, after due diligence, personal service pursuant to CPLR 308(1) and (2) cannot be made (see CPLR 308[4]). Plaintiff’s second affidavit of service fails to demonstrate that “nail and mail” service was made after due diligence, as it fails to state when service pursuant to CPLR 308(1) and (2) was previously attempted. Therefore, Plaintiff’s second affidavit does not meet Plaintiff’s prima facie burden of proper service.

Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss pursuant to CPLR 3211(a)(8) is granted, without prejudice to submit a proper affidavit of service within 30 days.

This constitutes the decision and order of the court.

2/6/2026
DATE


HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE