

<b>Evart v Rose</b>
2026 NY Slip Op 31214(U)
March 25, 2026
Supreme Court, New York County
Docket Number: Index No. 100994/2024
Judge: James G. Clynes
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

-----X

CLAUDIA EVART,

Plaintiff,

- v -

MICHAEL A. ROSE, DAVID CHEVERIE, EITAN OGEN,
NATALIE SEDAGHATI,

Defendant.

-----X

INDEX NO. 100994/2024

MOTION DATE 08/22/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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, 23, 24

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion by plaintiff CLAUDIA EVART pursuant to CPLR 3215 seeking default judgment and the cross motion by defendants pursuant to CPLR 3211 (a) (1), (5) (8), CPLR 214 (6), CPLR 306-b, CPLR 308 and CPLR 311 seeking to dismiss plaintiff's action with prejudice is decided as follows.

Plaintiff commenced this action seeking damages for legal malpractice for defendants' failure to include Certa Gente, LLC. in a previous action under Index Number 161123/2015. Plaintiff was struck by Franco Lazzari, co-owner of Vice Versa Restaurant while he was performing duties on behalf of Certa Gente, LLC. Plaintiff alleges Certa Gente, LLC. had a commercial liability insurance policy of \$1,000,000.00 and plaintiff could have recovered from Certa Gente, LLC. had defendants properly included them as a defendant.

DEFAULT JUDGMENT

A plaintiff moving for default judgment must establish proper service on defendant; defendant's default; and the facts constituting plaintiff's claims (CPLR 3215 [f]); Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416 [1st Dept 2022]). A court lacks personal

jurisdiction over a defendant who is not properly served with process (*Nationstar Mtge., LLC v Esdelle*, 186 AD3d 1384 [2d Dept 2020]).

Here, plaintiff fails to establish proper service upon the defendants pursuant to CPLR 308 and CPLR 311 by not providing an additional mailing until nearly a year after service was attempted, not perfecting service by filing an affidavit of service a year after service was attempted and failing to serve the defendants with a verified complaint.

The improper service on all defendants leaves the court without personal jurisdiction over the defendants. Thus, plaintiff's motion for default judgment is denied.

**CROSS-MOTION TO DISMISS PURSUANT TO CPLR 214 (6)**

Defendant's EITAN OGEN and NATALIE SEDAGHATI cross-move seeking to dismiss plaintiff's action with prejudice contending plaintiff brought a frivolous lawsuit beyond the statute of limitations warranting dismissal.

Pursuant to CPLR 214, the following actions must be commenced within three years: an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort.

The Court of Appeals has held "an action to recover damages for legal malpractice accrues when the malpractice is committed... What is important is when the malpractice was committed, not when the client discovered it" (*Shumsky v. Eisenstein*, 96 NY2d 164 [2001]) citing (*Gamm v. Allen*, 57 NY2d 87 [1982]).

Here, plaintiff entered into a retainer agreement with defendant's firm on March 23, 2015 (NYSCEF DOC NO 19) and remained with counsel until September 28, 2017, when another Court granted defendants EITAN OGEN and NATALIE SEDAGHATI motion for leave to withdraw as counsel of record representing plaintiff in another action pending under index number 161123/2015 (NYSCF DOC NO 15). Assuming that plaintiff's counsel committed legal malpractice by failing to add Certa Gente, LLC as a defendant in the separate action, plaintiff

brought this action nearly four years after the statute of limitations expired to bring a suit for legal malpractice.

The Court need not address defendants' motion seeking to dismiss plaintiff's action pursuant to CPLR 3211 (a) (1), (5), (8), CPLR 306-b, CPLR 308 and CPLR 311.

Thus, defendants' EITAN OGEN and NATALIE SEDAGHATI, cross-motion seeking to dismiss plaintiff's action with prejudice is granted.

### **CROSS-MOTION TO DISMISS FOR IMPROPER SERVICE**

Defendants MICHAEL ROSE, Esq. and DAVID CHEVERIE, Esq. cross moves seeking to dismiss plaintiff's action with prejudice contending plaintiff improperly served the defendants.

Pursuant to CPLR 308, personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or
2. 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.

Pursuant to CPLR 306(b) Personal service. Whenever service is made pursuant to this article by delivery of the summons to an individual, proof of service shall also include, in addition to any other requirement, a description of the person to whom it was so delivered, including, but not limited to, the process server's perception of the person's: gender, race, hair color, approximate age, approximate weight and height, and other identifying features.

Pursuant to CPLR 311 (a) Personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows:

1. upon any domestic or foreign corporation, 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.

Here, plaintiff improperly served defendants MICHAEL ROSE, Esq. and DAVID CHEVERIE, Esq. Plaintiff alleges to have served the defendants via substituted service pursuant to CPLR 308 (2) to an unauthorized individual named Elizabeth at 112 Madison Avenue, 10<sup>th</sup> Floor, New York, NY 10016. Said service does not outline which defendant the service is on behalf of, how Elizabeth relates to either defendant and plaintiff neglected to make a follow up mailing of the summons pursuant to CPLR 308(2). Moreover, defendant's attorneys' argument that, assuming plaintiff attempted to characterize the law firms of "Hach Rose Schirripa & Cheverie LLP" or HACH& ROSE, LLC" as the proper entities for service, nevertheless service as improper under CPLR 311 due to service not being effectuated upon an officer, director, managing or general agent, cashier, or assistant cashier of a corporation.

The improper service on defendants MICHAEL ROSE, Esq. and DAVID CHEVERIE, Esq. leaves the court without personal jurisdiction over the said defendants. Thus, defendant's motion is granted, and plaintiff's action is dismissed.

Plaintiff's motion seeking default judgment against the defendants is denied, defendants EITAN OGEN and NATALIE SEDAGHATI cross motion seeking to dismiss plaintiff's action with prejudice is granted and defendants MICHAEL ROSE, Esq. and DAVID CHEVERIE, Esq cross motion to dismiss plaintiff's action with prejudice is granted to the extent that plaintiff's action is dismissed. Accordingly it is

ORDERED that the motion by plaintiff seeking default judgment against defendants is denied; and it is further

ORDERED that the cross motion of defendants EITAN OGEN and NATALIE SEDAGHATI to dismiss plaintiff's action is granted and this action is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further


ORDERED that the cross-motion by defendants MICHAEL ROSE, Esq. and DAVID CHEVERIE, Esq. to dismiss plaintiff's action is granted and this action is dismissed in its entirety as against said defendants and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)).

This constitutes the Decision and Order of this Court

3/25/2026  
DATE

  
JAMES G. CLYNES, 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	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE