

Hamilton Equity Group, LLC v Nice Food, Inc.

2026 NY Slip Op 30993(U)

March 16, 2026

Supreme Court, New York County

Docket Number: Index No. 160631/2024

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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HAMILTON EQUITY GROUP, LLC, AS ASSIGNEE OF
HSBC BANK USA, NATIONAL ASSOCIATION,

INDEX NO. 160631/2024

Plaintiff,

MOTION DATE 07/21/2025

- v -

MOTION SEQ. NO. 001

NICE FOOD, INC., ZAFAR IQBAL

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for RENEWAL.

APPEARANCES:

Rupp Pfalzgraf LLC, Buffalo, NY (Kyle C. Didone, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action seeking to renew the August 29, 2006 judgment issued in favor of non-party HSBC Bank USA, National Association against defendants NICE FOOD and ZAFAR IQBAL in the amount of \$103,958.97, plaintiff HAMILTON EQUITY GROUP, LLC, as assignee of HSBC BANK USA, NATIONAL ASSOCIATION, moves, pursuant to CPLR § 3215, for an order granting it a renewal judgment against defendants in the amount of \$103,958.97, together with statutory interest from September 05, 2005.

An action for a renewal judgment can constitute one for a sum certain, and therefore, defaults in a CPLR § 5014 proceeding

are subject to the applications and procedures governed by CPLR § 3215 (see Capital Equity Mgt., LLC v Sunshine, 222 AD3d 640, 642 [2d Dept 2023]). Therefore, a plaintiff seeking a renewal judgment based on a defendants' default must satisfy the statutory requirements, including those governing proof of service and proof of the facts constituting a claim, on a CPLR § 3215 motion (see id.).

To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (see CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

In order for a plaintiff to establish its prima facie entitlement to a renewal judgment, plaintiff must show (1) the existence of the underlying judgment; (2) that the defendant was a judgment debtor; (3) that the underlying judgment was docketed at least nine years prior to the commencement of this action; and (4) that the underlying judgment remained partially or completely unsatisfied (see CPLR § 5014; Lull v Van Tassell, 171

AD3d 1155, 1156 [2d Dept 2019]; see also The Cadle Co. v Biberaj, 307 AD2d 889 [1st Dept 2003]).

Here, plaintiff has not established its entitlement to entry of a default judgment against defendants pursuant to CPLR § 3215. Plaintiff submits sufficient proof of service of the summons and complaint (New York State Court Electronic Filing System [NYSCEF] Doc. Nos. 04 and 05) and defendants' default (NYSCEF Doc. No. 07), but has failed to submit "proof by affidavit made by the party of the facts constituting the claim" (231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]).

Specifically, though plaintiff submits the underlying judgment entered on August 29, 2026 (NYSCEF Doc. No. 02, underlying judgment issued in HSBC Bank USA, National Association v Nice Food and Zafar Iqbal, Index No. 601950/2006) as well as the assignment of judgment to plaintiff HAMILTON EQUITY GROUP, LLC (NYSCEF Doc. No. 03, assignment of judgment, dated June 09, 2009), the affirmation of Kyle C. DiDone, Esq., counsel for plaintiff, is insufficient to demonstrate that the underlying judgment remains partially or completely unsatisfied (see Perlberger v Lutin, 202 AD3d 554, 555 [1st Dept 2022] [finding that plaintiff met his prima facie burden on his motion for summary judgment in lieu of complaint seeking to renew a money judgment by submitting, among other things, "his personal

affidavit stat[ing] that the underlying judgment remains wholly unsatisfied" [emphasis added]).

Accordingly, it is hereby

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

ORDERED that, within fifteen days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon defendants; it is further

ORDERED that plaintiff shall bring a renewed default judgment motion within 90 days from the date of this decision and order; and it is further

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

3/16/2026

DATE

Emily Morales-Minerva
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