

<b>Becker N.Y., P.C. v Gignet, Inc.</b>
2026 NY Slip Op 31166(U)
March 20, 2026
Supreme Court, New York County
Docket Number: Index No. 654904/2024
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 42M

-----X  
BECKER NEW YORK, P.C.,

Plaintiff,

- v -

GIGNET, INC. F/K/A COBALT HOLDINGS, INC., EDWARD  
MOONEY, PAUL MOORE

Defendants.

INDEX NO. 654904/2024

MOTION DATE 08/18/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13

were read on this motion to/for

JUDGMENT - DEFAULT

APPEARANCES:

The Willis Law Group PLLC, Garland, TX (James John Mahon,  
Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action sounding in, among other things, breach of  
contract and account stated, plaintiff BECKER NEW YORK, P.C.  
(plaintiff) moves, pursuant to CPLR § 3215, for an order  
granting it leave to enter a default judgment against defendants  
GIGNET, INC. f/k/a COBALT HOLDINGS, INC. and PAUL MOORE<sup>1</sup> in the  
amount of \$33,121.45, together with costs, disbursements, and  
statutory interest.

<sup>1</sup> Plaintiff does not move for leave to enter a default judgment against  
defendant EDWARD MOONEY.

Defendants do not appear or submit opposition to the motion (sequence number 01).

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]). 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]).

Here, plaintiff fails to demonstrate its entitlement to entry of a default judgment against either defendant. As to defendant GIGNET, INC. f/k/a COBALT HOLDINGS, INC., the summons and complaint had not yet been served when the instant motion was filed. The motion was filed on May 15, 2025, while service was not effectuated until May 28, 2025 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 04, notice of motion,

dated May 15, 2025; see also NYSCEF Doc. No. 12, affidavit of service, with service effectuated on May 28, 2025). Therefore, because defendant was not in default at the time of the motion, the request for a default judgment must be denied.

With respect to defendant PAUL MOORE, the affirmation of service pursuant to CPLR § 308 (2) is defective (see NYSCEF Doc. No. 15, affidavit of service). The affirmation does not establish that the process server made the requisite inquiry of the person served to determine defendant's actual place of business, dwelling place, or usual place of abode. Nor does it demonstrate that the process server searched Department of Motor Vehicles records to verify defendant's address (see Everbank v Kelly, 203 AD3d 138, 147 [2d Dept 2022]; see also Fontanez v PV Holding Corp., 182 AD3d 423 [1st Dept 2020])).

Further, the Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act requires a party seeking a default judgment to submit proof that the individual defendant was not in military service at the time of the default, which plaintiff has failed to do (see 50 USC § 3931 [b] [1] [emphasis added]; see also Military Law § 309 [1])).

Notwithstanding the aforementioned defects, the motion is also denied inasmuch as plaintiff's proof does not establish a prima facie case as to any of the causes of action alleged in the complaint.

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 twenty 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.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/20/2026  
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