

QG Trading Inc v RF Broadway LLC

2025 NY Slip Op 33043(U)

July 28, 2025

Supreme Court, New York County

Docket Number: Index No. 651576/2025

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
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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QG TRADING INC

Plaintiff,

- v -

RF BROADWAY LLC DBA REDFARM,

Defendant.

INDEX NO. 651576/2025

MOTION DATE 05/27/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Canfield Ruggiero LLP, Melville, NY (John Paul Ruggiero, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, commenced by summons with notice, plaintiff QG TRADING INC., moves, by notice of motion (motion seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant RF BROADWAY LLC D/B/A REDFARM in the amount of \$101,384.22. Defendant does not appear or submit opposition.

In its summons with notice, plaintiff QG TRADING INC. (plaintiff) does not delineate the causes of action that it will assert against defendant RF BROADWAY LLC D/B/A REDFARM (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001,

Summons with Notice, dated March 24, 2025). Rather, it states, in its entirety:

"[t]he nature of this action is to recover the reasonable and agreed upon value of food and restaurant supplies sold to defendant by plaintiff, on a running basis, the total sum of which is \$101,384.22 as of February 19, 2025. The relief sought is a judgment in favor of plaintiff and against defendant in the sum of \$101,384.22"

(id.).

As explained below, the court dismisses the motion.

When a defendant fails "to appear, please 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]). Among other things, to succeed on a motion for a default judgment, the proponent of such application must file proof of service of the summons and complaint on the defaulting party (see CPLR § 3215 [f]).

It is black letter law that, as defendant RF BROADWAY LLC D/B/A REDFARM is a limited liability corporation (NYSCEF Doc. No. 008, Entity Information), "personal service upon [it] . . . shall be made by delivering the summons . . . 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" on its behalf (CPLR § 311 [a][1]). Since the statute requires "actual delivery to the proper person

[authorized to receive process for the corporation], delivery to a corporate employee not listed in CPLR § 311 (subd 1) will not normally provide personal jurisdiction over the defendant corporation" (Fashion Page, Ltd. v Zurich Ins. Co., 50 NY2d 265, 274 [1980]; see also generally Phipps SC, LLC v Carvajal, 2025 NY App Div LEXIS 1270 [1st Dept 2025] [relying on Fashion Page, 50 NY2d at 273, in determining proper service]; Matter of Jiggetts v MTA Metro-N.R.R., 121 AD3d 414, 414 [1st Dept 2014] [providing that CPLR § 311 (a)(1) requires that the process server tender process directly to an authorized corporate representative]).

Here, plaintiff's affidavit of service does not purport to have effectuated service on an "officer, director, managing or general agent, or cashier or assistant cashier" of defendant RF BROADWAY LLC D/B/A REDFARM. Instead, the affidavit of service avers that the process server delivered the summons with notice to "Leonardo", who is described therein only as a 40-year-old Hispanic male weighing 200 pounds, 5'4"-5'8" tall, and with black hair (see NYSCEF Doc. No. 006, Affidavit of Service). Further, it is unclear whether "Leonardo" is the first or the last name of the individual described therein.

While the process server avers that he "knew [Leonardo] to be an Agent For Service of Process," such language does not equate to an affirmation that the process server knew the person

who received the summons with notice to be an "agent authorized by appointment or by law to receive service" on behalf of defendant RF BROADWAY LLC D/B/A REDFARM (id.; see also Matter of Jiggetts, 121 AD3d at 414). On its face, this statement is also not an affirmation that "Leonardo" held themselves out to be authorized to receive service of the summons with notice for the purposes of this Court acquiring personal jurisdiction over defendant RF BROADWAY LLC D/B/A REDFARM.

Further, "CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (Welz v Brown, 228 AD3d 416, 418 [1st Dept 2024]; Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]). While the standard of proof necessary to support an application for a default judgment is not stringent, some firsthand confirmation of the facts forming the basis of the claim is necessary (see Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]; see also Resnick v Lebovitz, 28 AD3d 533 [2d Dept 2006]).

Notwithstanding the defect addressed above, plaintiff has not submitted proof of the facts constituting the claim (see CPLR § 3215 [f]). In a situation where there is a complaint verified by plaintiff, it can serve as proof of the facts

constituting the claim (see Knudsen v Green Machine Landscaping, Inc., 223 AD3d 792 [2d Dept 2024]). However, plaintiff never filed a complaint in this action, and the summons with notice is bereft of any facts (NYSCEF Doc. No. 001). Further, while plaintiff submits the affirmation of William Ma, President of plaintiff, it simply cites to the summons with notice, which contains no allegations (see NYSCEF Doc. No. 004, Affirmation of William Ma, dated May 15, 2025). And, the exhibit attached to the motion entitled "Statement", which contains various dollar amounts and dates with no explanation or identification, is in both English and Chinese, and is not accompanied by a certificate of translation (see NYSCEF Doc. No. 009, Statement, dated February 19, 2025).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, against defendant RF BROADWAY LLC D/B/A REDFARM is dismissed without prejudice; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/28/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

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