

**Rottenberg Lipman Rich, P.C. v WCB Holdings, LLC**

2025 NY Slip Op 33120(U)

August 14, 2025

Supreme Court, New York County

Docket Number: Index No. 161797/2024

Judge: Emily Morales-Minerva

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. EMILY MORALES-MINERVA PART 42M**

*Justice*

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ROTTENBERG LIPMAN RICH, P.C.

Plaintiff,

- v -

WCB HOLDINGS, LLC,

Defendant.

-----X

INDEX NO. 161797/2024  
MOTION DATE 03/07/2025  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for JUDGMENT - DEFAULT.

**APPEARANCES:**

Rottenberg Lipman Rich, P.C., New York, NY (Jennifer Kredler, Esq) for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this breach of contract action, plaintiff ROTTENBERG LIPMAN RICH, P.C. (RLR) moves, by notice of motion (mot. seq. no. 001), for entry of a default judgment against defendant WCB HOLDINGS, LLC (WCB), pursuant to CPLR § 3215, in the amount of \$134,765.92, plus contractual interest, costs, and disbursements. WCB does not appear or submit opposition.

As explained below, the court dismisses the motion.

## ANALYSIS

CPLR § 3215 (a) authorizes the Court to grant a default judgment where 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." 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]). Generally, the proponent of a default judgment shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]).

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])). "[A] complaint verified by counsel amounts to no more than an attorney's affidavit, and is insufficient to support entry of default judgment" (Feffer, 210 AD2d at 61).

Importantly, CPLR § 3215(f) expressly requires an "affidavit made by the party" containing proof of the facts constituting the claim, unless a verified complaint has been served and may be used in lieu of such an affidavit (see CPLR 105[u]). A complaint verified by counsel, without personal knowledge, is insufficient (Feffer, 210 AD2d at 61). This principle was recently reaffirmed in Gaviola v City of New York, where the Court held that a verified complaint could not satisfy CPLR § 3215(f) absent personal knowledge of the underlying facts (234 AD3d 525 [1st Dept 2025]).

Here, RLR's attorney affirmation does not contain any firsthand knowledge of the transactions, and no affidavit from a person with knowledge of the underlying legal services or the account stated has been submitted. Under Feffer and Gaviola, such a submission is insufficient to satisfy CPLR § 3215(f). In this case, neither the complaint verified by counsel, nor the attorney affirmation submitted in support of the motion constitutes proof made upon personal knowledge within the meaning of CPLR § 3215(f) (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 001, Complaint; see also NYSCEF Doc. No. 008, Affirmation of Jennifer A. Kreder, Esq.).

The requirement that the facts constituting the claim be established by an affidavit made upon personal knowledge is not a mere technicality, rather it is one of the three independent prongs that must each be satisfied before the Court may grant a default judgment (see CPLR § 3215[f]). Even if the other elements, such as proof of service and proof of default, are adequately demonstrated, the absence of competent proof on any one prong is fatal to the application. The absence of a proper affidavit of merit or a verified complaint executed by a party with personal knowledge precludes the Court from granting the relief requested.

Here, while the record contains an affidavit of service establishing jurisdiction, and an attorney's affirmation confirming the WCB's failure to appear, there is no affidavit from a person with firsthand knowledge of the facts underlying the claim. Instead, the only factual submission is a complaint verified by counsel, which is insufficient (see Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]; see also Gaviola v City of New York, 234 AD3d 525 [1st Dept 2025]).

Although the verified complaint in this action alleges that WCB is liable for unpaid reimbursements relating to legal services, the only verification offered in support of the motion is executed by counsel from the same law firm that appears on behalf of RLR in this matter, rather than by an individual with

personal knowledge of the underlying transactions. An attorney's affirmation, even from the firm that rendered the services at issue, does not, without more, constitute proof upon personal knowledge within the meaning of CPLR § 3215(f). As the First Department has repeatedly held, such verification "amounts to no more than an attorney's affidavit" and is insufficient to establish the facts constituting the claim (see *Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]; see also *Gaviola v City of New York*, 234 AD3d 525 [1st Dept 2025]). The statutory requirement contemplates sworn factual assertions from a person with firsthand knowledge -- here, that could be an employee, or other individual directly involved in the underlying transaction -- not counsel merely reiterating the allegations of the pleading. While the complaint sets forth a claim for reimbursement, the absence of a proper affidavit of personal knowledge renders the submission defective, and the court is constrained to deny the motion notwithstanding the apparent satisfaction of the other CPLR § 3215 prerequisites.

Accordingly, it is hereby

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

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

8/14/2025

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