

IDEA 247, INC. v GIMMIE, LLC

2025 NY Slip Op 33402(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 151042/2024

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
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X
IDEA 247, INC., INDEX NO. 151042/2024
Plaintiff, MOTION DATE 06/13/2025
MOTION SEQ. NO. 001

- v -

GIMMIE, LLC, LEONARDO GIANELLA

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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

APPEARANCES:

Berkovitch & Bouskila, PLLC, Pomona, New York (Ariel Bouskila, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action, plaintiff IDEA 247, INC., moves, by notice of motion (sequence number 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendants GIMMIE, LLC and LEONARDO GIANELLA. Defendants do not appear or submit opposition to the motion.

For the reasons set forth below, the motion (seq. no. 001) is denied, without prejudice.

BACKGROUND

This action was commenced on February 05, 2024, by plaintiff IDEA 247, INC. (plaintiff) against defendants GIMME LLC and LEONARDO GIANELLA (defendants) to recover money allegedly owed under a loan agreement and personal guaranty (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). Thereafter, prior to effectuating service of process, plaintiff filed an amended complaint (see NYSCEF Doc. No. 005, Amended Complaint, dated February 08, 2024).

Defendant GIMME LLC was served with the summons and amended complaint on March 12, 2024, pursuant to CPLR § 306 (b) (1) (governing service of process on secretary of state) (see NYSCEF Doc. No. 006, Affidavit of Service). Defendant LEONARDO GIANELLA was served with the summons and amended complaint on March 16, 2024, pursuant to CPLR § 308 (2) (governing personal service by delivering the summons to a personal of suitable age and discretion) (see NYSCEF Doc. No. 007, Affidavit of Service, with a filing date of April 16, 2024).

Then, on May 30, 2024, plaintiff filed a second amended complaint (see NYSCEF Doc. No. 008, Amended Complaint). Defendant GIMME LLC was served with the "amended summons and complaint" on June 21, 2024, again pursuant to CPLR § 306 (b) (1) (see NYSCEF Doc. No. 009, Affidavit of Service). Defendant

LEONARDO GIANELLA was served with the "summons and complaint" on June 20, 2024, this time pursuant to CPLR § 308 (1) (governing personal service to the person to be served) (see NYSCEF Doc. No. 10, Affidavit of Service). Neither defendant answered the amended complaint.

Now, by notice of motion (seq. no. 001) filed on March 27, 2025, plaintiff moves for a default judgment pursuant to CPLR § 3215 against defendants.

ANALYSIS

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]). 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]).

However, section 3025 of the CPLR provides, "[a] party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires" (emphasis added). Thereafter, a party

must seek leave of court to amend his or her pleading (see CPLR § 3025 [b]).

Here, plaintiff was not within its right to amend the complaint without leave of court -- plaintiff's time to amend the complaint as of right pursuant to CPLR § 3025 (a) expired on May 28, 2024 (see CPLR § 308 [2] [discussing time frames for deeming service complete]; see also CPLR § 3025 [a-b]).

Notwithstanding this procedural defect, plaintiff's affidavit of service pertaining to service on defendant LEONARDO GIANELLA is also defective. The affidavit of service states that "deponent served the within summons and complaint" upon defendant LEONARDO GIANELLA (NYSCEF DOC. No. 10, Affidavit of Service [emphasis added]). The affidavit of service does not attach the summons and complaint, nor does it adequately describe the same. Because three complaints have been filed in the instant action, this lack of specificity renders the affidavit of service defective.

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.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/10/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

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