

Marriott Intl., Inc. v Mischief Mgt., LLC

2025 NY Slip Op 34108(U)

October 23, 2025

Supreme Court, New York County

Docket Number: Index No. 650820/2025

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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INDEX NO. 650820/2025

MARRIOTT INTERNATIONAL, INC., as manager
of NEW YORK MARRIOTT MARQUIS,

MOTION DATE 06/09/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

MISCHIEF MANAGEMENT, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Jasne & Florio, L.L.P., White Plains, NY 10603 (Daniel F. Florio, Esq.) for plaintiff.

HON. EMILY MORALES-MINERVA, J.S.C.

In this action sounding in, among other things, breach of contract, plaintiff MARRIOTT INTERNATIONAL, moves (motion sequence number 01), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant MISCHIEF MANAGEMENT, LLC, in the amount of \$27,861.53, plus interest from September 29, 2023.

For the reasons explained below, the motion (seq. no. 01) is dismissed, without prejudice.

BACKGROUND

Plaintiff MARRIOTT INTERNATIONAL, INC., is a hotel chain, and it manages the New York Marriott Marquis (hotel), in New York County. Defendant MISCHIEF MANAGEMENT LLC is a limited liability company with its principal place of business in New York.

On June 30, 2022, plaintiff and defendant entered into a contract for defendant to hold an event -- "BroadwayCon" -- at plaintiff's hotel from July 20, 2023, to July 22, 2023 (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, complaint; see also NYSCEF Doc. No. 02, contract). Defendant held the event, as scheduled (see NYSCEF Doc. No. 01, complaint).

On September 29, 2023, plaintiff sent defendant an invoice for \$27,861.53, which plaintiff alleges represented the outstanding balance due under the contract (see NYSCEF Doc. No. 01, complaint, and Doc. No. 03, invoices). On October 30, 2023, having not been paid, plaintiff sent a letter to defendant, demanding said payment (see NYSCEF Doc. No. 04, demand letter dated October 30, 2023). According to plaintiff, defendant again failed to remit payment (see NYSCEF Doc. No. 01, complaint).

Thereafter, plaintiff commenced the instant action against

defendant sounding in breach of contract, account stated, quantum meruit and unjust enrichment (see NYSCEF Doc. No. 01, complaint). No answer has been filed.

Now, plaintiff moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant.

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]).

Further, in matters of default, where "the defendant fail[s] to appear, and the plaintiff does not have the benefit of discovery, the supporting affidavit "need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71, citing 7 Weinstein-Korn Miller, NY Civ Prac ¶ 3215.24, at 32-326; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]). "Indeed,

defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: "[B]y defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages"]).

However, "[s]ome proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action,' but the standard of proof is 'minimal,' and 'not stringent'" (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]).

Though plaintiff submits an affirmation of facts by Jenna Casil, plaintiff's Director of Finance and Business support (NYSCEF Doc. No. 07), the contract (NYSCEF Doc. No. 09), the invoices (NYSCEF Doc. No. 10), and the final demand for payment (NYSCEF Doc. No. 11) -- demonstrating proof of the facts constituting the claim -- service of process upon defendant is defective.

Proof of service on a limited liability company shall include an affidavit of service, pursuant Limited Liability Company Law § 303, providing for, among other things, service of

process on the Secretary of State as an agent of the corporation or limited liability company.¹

Similarly, where a default judgment is sought, as here, against a limited liability company, the proponent must also submit proof that -- either simultaneous with service or after such service -- they executed "additional service of the summons [on the limited liability company] by first class mail" at the limited liability company's "last known address" (CPLR § 3215 [g] [4] [i] [emphasis added]).

While plaintiff appropriately served defendant by effectuating service upon the Secretary of State (NYSCEF Doc. No. 05, affidavit of service, dated February 27, 2025), plaintiff provides insufficient proof of compliance with the additional mailing requirement of CPLR § 3215(g)(4)(ii). The affirmation of additional mailing provides that the summons and complaint were mailed to defendant at "379 W. Broadway, New

¹ Section 303 of the Limited Liability Company Law provides, as relevant here: "(a) Service of process on the secretary of state as agent of a domestic limited liability company or authorized foreign limited liability company shall be made in the manner provided by paragraph one or two of this subdivision. Either option of service authorized pursuant to this subdivision shall be available at no extra cost to the consumer. (1) Personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the department of state specified for that purpose."

York, NY 10012", while the invoices provide an address of "500 7th Avenue, Fl. 8, New York, NY 10018" for defendant, and the demand letter provides an address of "119 W 23rd Street, 610, New York, NY 10011" (see NYSCEF Doc. No. 14, affirmation of additional mailing, Doc. N. 10, invoices, and Doc. No. 11, demand letter). It is simply unclear which, if any, address is defendant's last known address, and if "379 W. Broadway, New York, NY 10012" is defendant's last known address, it is plaintiff's responsibility to attest to the same.

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 plaintiff shall bring a renewed default judgment motion within 90 days; and it is further

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

10/23/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

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