

**Rigs Mgt. Co., LLC v M&E Paradise 2 & Smoke,
Corp.**

2025 NY Slip Op 34610(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 654431/2024

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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RIGS MANAGEMENT CO., LLC,
Plaintiff,

INDEX NO. 654431/2024

MOTION DATE 07/07/2025

MOTION SEQ. NO. 001

- v -

M&E PARADISE 2 & SMOKE, CORP., MOHAMAH
NAWALEH, EMAD ALRAWASHDEH

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for JUDGMENT - DEFAULT

APPREANCES:

Martin P. Skolnick, Esq. (Martin Phillip Skolnick, Esq.)
for plaintiff.

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

In this action sounding in breach of a lease agreement and
breach of a personal guaranty, plaintiff RIGS MANAGEMENT CO.
LLC, moves, by notice of motion (sequence number 01), pursuant
to CPLR § 3215, for an order granting it a default judgment
against defendants M&E PARADISE 2 & SMOKE CORP. and EMAD
ALRAWASHDEH (defendants), in the amount of \$48,971.35.¹
Defendants make no appearance.

¹ Plaintiff does not move for a default judgment against defendant MOHAMAH
NAWALEH.

Now, upon review of the application and supporting materials, the Court denies the motion entirely.

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 must provide 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]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003]; Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416, 416 [1st Dept 2022])).

As a defaulting defendant fails to appear and "the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71). Indeed, it is well settled that "defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (id., citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Martino v Chenel Capital, LLC, 235 AD3d 498, 499 [1st Dept 2025] [applying the same principle])).

Proof of service on a natural person includes an affidavit of service attesting to delivery of the summons in compliance with CPLR § 308. Proof of service on a corporation shall include an affidavit of service, pursuant to Business Corporation Law § 306, providing for, among other things, service of process on the secretary of state as an agent of the corporation.²

Further:

"When a default judgment based on nonappearance is sought [as here] against a natural person in an action based upon nonpayment of a contractual obligation, an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least 20 days before the entry

² Section 306 of the Business Corporation Law provides, as relevant here: "(b) (1) Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made in the manner provided by clause (i) or (ii) of this subparagraph. . . . (i) Personally delivering to and leaving with the secretary of state or a 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 corporation 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 corporation, at the post office address, on file in the department of state, specified for the purpose. If a domestic or authorized foreign corporation has no such address on file in the department of state, the secretary of state shall so mail such copy, in the case of a domestic corporation, in care of any director named in its certificate of incorporation at the director's address stated therein or, in the case of an authorized foreign corporation, to such corporation at the address of its office within this state on file in the department. . . . "(2) An additional service of the summons may be made pursuant to paragraph four of subdivision (f) of section thirty-two hundred fifteen of the civil practice law and rules" [providing that "[w]hen a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment"]).

of judgment, by mailing a copy of the summons by first-class mail to the defendant at [their] place of residence in an envelope bearing the legend 'personal and confidential' and not indicating on the outside that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant's place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence"

(CPLR § 3215 [g] [3] [i] [emphasis added]).

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

Here, plaintiff did not appropriately serve defendant EMAD ALRAWASHDEH in accordance with CPLR § 308 (2) (see NYSCEF Doc. No. 05, affidavit of service). Plaintiff's process server served defendant EMAD ALRAWASHDEH by delivering a copy of the summons and complaint to "JOHN DOE (refused name), the Co-Tenant of [defendant], a personal of suitable age and discretion" at 1675 Colden Avenue, Apt. 3C, Bronx, New York 10462 (id.

[emphasis in original]). The affidavit of service is silent as to whether the process server performed a proper inquiry to determine if said premises is defendant EMAD ALRAWASHDEH's "actual place of business, dwelling place, or usual place of abode" by either inquiring with the person served, or by conducting a search of the records of the Department of Motor Vehicles (see Everbank v Kelly, 203 AD3d 138, 147 [2d Dept 2022] [holding that "[t]he process server must perform a proper inquiry to determine the defendant's actual place of business, dwelling place, or usual place of abode", which consists of inquiring of the person of suitable age and discretion as to whether defendant lives or works at the service address]; see also Fontanez v PV Holding Corp., 182 AD3d 423 [1st Dept 2020] [finding that a search of Department of Motor Vehicle records to ascertain a defendant's address is deemed sufficient]). Without any factual or evidentiary support substantiating defendant's dwelling place, usual place of abode, or actual place of business, service of process pursuant to CPLR § 308 (2) is defective.

Notwithstanding, plaintiff's affirmation of mailing of the additional copy of the summons and complaint to defendant EMAD ALRAWASHDEH does not comply with CPLR § 3215 [g] [3] [i], which is required as this case involves the nonpayment of a contractual obligation. Said affirmation states only:

"In accordance with CPLR § 3215 (g), additional copies of the summons and complaint were mailed to [defendants] on March 10, 2025, by first class mail. The CPLR § 3215 (g) notice mailed to [defendant] Emad Alrawashdeh was sent in any envelope that indicated it was 'personal and confidential' and further did not indicate on the outside of the envelope that the communication was from an attorney"

(NYSCEF Doc. No. 03, affirmation in support of motion for default judgment).

Next, while plaintiff submits sufficient proof of service of the summons and complaint upon defendant M&E PARADISE 2 & SMOKE CORP. (see NYSCEF Doc. No. 05, affidavit of service [providing that service of process was effectuated upon the Secretary of State in accordance with BCL § 306]), plaintiff's affirmation of mailing does comply with CPLR § 3215 (g) (4) (ii). Specifically, the deponent does not attest to having mailed the summons and complaint to defendant corporation's "last known address" (see NYSCEF Doc. No. 03, affirmation in support of motion for default judgment). In any event, a conclusory statement of a corporation's "last known address" would be insufficient absent language substantiating the source of that knowledge.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01) is denied, without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on defendants within 15 days of such entry, and shall file proof of such with the Court; and it is further

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

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/01/2025
DATE

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

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