

**Ascendus Inc. v Quezada**

2025 NY Slip Op 34828(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 659577/2024

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  
COUNTY OF NEW YORK: PART 42M

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ASCENDUS INC,

Plaintiff,

- v -

EDWIN JUNIOR QUEZADA, AUTO CARE TRANSPORT  
LLC

Defendant.

INDEX NO. 659577/2024

MOTION DATE 07/30/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. EMILY MORALES-MINERVA:

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

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Danielle N. Grzan Esq. P.C., New York, NY (Danielle N. Grzan, Esq., and Jay Press, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action sounding in account stated for an alleged failure to make payments on a promissory note executed by defendant AUTO CARE TRANSPORT LLC and guaranteed by defendant EDWIN JUNIOR QUEZADA, plaintiff ASCENDUS INC. moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for a default judgment against defendants. Defendants do not appear or submit opposition to the motion.

Now, upon review of the application and supporting materials, the Court denies the motion (seq. no. 01) 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])).

"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])). Though a defaulting defendant is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them . . . if those factual allegations do not state a valid cause of action, the party moving for judgment is not entitled to the requested relief, even on default" (Nationstar Mortgage, LLC v Hilpertshauser, 156 AD3d 1052, 1053 [3d Dept 2017] [internal

citations and quotation marks omitted]; see also Zelnik v Bidermann Indus. U.S.A., Inc., 242 AD2d 227, 232 [1st Dept 1997]).

"An account stated claim is an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (TH Fashion Ltd. v Vince Holding Corp., 230 AD3d 1079, 1079-1080 [1st Dept 2024], quoting Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 185 [1st Dept 2024] [internal quotation marks omitted]). Such assent may be "implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (Stardom Brands, LLC v S.K.I. Wholesale Beer Corp., 172 AD3d 1266, 1268 [2d Dept 2019]; Aronson Mayefsky & Sloan, LLP, 228 AD3d at 185).

However, like all parties suing on an account stated, plaintiff "must establish that it sent invoices to defendant and that those invoices were received and retained by defendant without objection made in a reasonable period of time" (23rd St. Berk, LLC v Journey Flatiron LLC, 83 Misc3d 1293[A] [Sup Ct NY Cnty 2024] [G. Lebovits, J.S.C.], citing Morrison Cohen Singer & Weinstein, LLP v Brophy, 19 AD3d 161, 161-162 [1st Dept 2005]; LD Exch., Inc. v Orion Telcoms. Corp., 302 AD2d 565 [2d Dept 2003]).

Here, though plaintiff submits proof of service for both defendants (NYSCEF Doc. Nos. 02 and 05), compliance with the additional service requirements of CPLR § 3215 (g) (3) and (4) (NYSCEF Doc. Nos. 05 and 07), and proof that defendant EDWIN JUNIOR QUEZADA was not in the military service at the time of default (NYSCEF Doc. No. 08), plaintiff has not provided satisfactory prima facie proof of an account stated.

The allegations in the verified complaint, even when supplemented by the promissory note (NYSCEF Doc. No. 12) and a document entitled "payoff quote" (NYSCEF Doc. No. 13),<sup>1</sup> are insufficient. The verified complaint is silent as to whether invoices were sent to defendants or how they were delivered (see 23rd St. Berk, LLC, 83 Misc3d at \*2), and plaintiff offers no evidence of their transmission or receipt. Additionally, the verified complaint alleges neither that defendants made partial payments on the invoices nor the amounts -- if any -- remitted by defendants (see Garr Silpe, P.C. v Weir, 208 AD3d 1098, 1099 [1st Dept 2022] [holding that plaintiff submitted proof that defendant made partial payments on the account, supporting its claim for account stated]; see also Investors Bank v SISS 1468 Corp., 2022 NY Slip Op 32442 [U], \*\*3 [Sup Ct NY Cnty 2022] [finding that plaintiff fails to submit a payment ledger or any

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<sup>1</sup> The document entitled "payoff quote" contains no identifying information linking it to the promissory note in question (see NYSCEF Doc. Nos. 12 [promissory note, with note number: 0000073404] and No. 13 ["payoff quote", with loan number: LAI-00013663]).

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other evidence establishing the amount of defendants' indebtedness on the promissory note and personal guaranty]).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendants; 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.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/11/2025

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