SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

----------X

ALICE BAUER,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,VERIZON NEW YORK INC.,EMPIRE CITY SUBWAY COMPANY (LIMITED), AT&T COMMUNICATIONS OF NEW YORK, INC.,CROWN CASTLE USA, INC.,SPECTRUM ENTERPRISE HOLDINGS INC,

Defendant.

----------X

INDEX NO. 153837/2025

MOTION DATE 12/11/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion for DEFAULT JUDGMENT.

Plaintiff Alice Bauer ("Plaintiff") moves, pursuant to CPLR § 3215, for an order: 1.) granting a default judgment against Spectrum Enterprise Holdings Inc. ("Spectrum"), the only non-appearing defendant; 2.) and scheduling the matter for an inquest on damages as against Spectrum.

BACKGROUND AND PROCEDURAL HISTORY

This personal-injury action arises out of an alleged trip-and-fall that occurred on October 14, 2023, when Plaintiff, while walking on the sidewalk in front of 120 West 45th Street in Manhattan, allegedly tripped on a depressed subway grating and sustained serious injuries.

Plaintiff commenced this action by summons and verified complaint filed March 24, 2025, naming, among others, the City of New York, various utility and telecommunications entities, and Spectrum as defendants. Plaintiff's motion papers recite that the various appearing defendants were served and have answered, and that Spectrum was served with process but has failed to appear or answer within the time prescribed by the CPLR.

To obtain a default judgment against Spectrum, plaintiff submits, *inter alia*, the Affirmation in Support of counsel, Cornelius J. Redmond, Esq., and an "Attorney Affirmation of Merit" submitted in lieu of a Plaintiff's affidavit pursuant to CPLR § 2106. Counsel's supporting affirmation asserts, in conclusory fashion, that each named defendant "owned, occupied, managed, maintained, inspected, repaired, and/or controlled" the subject premises and sidewalk and failed to maintain the area in a reasonably safe condition.

Spectrum opposes the motion through an Affirmation in Opposition by Charles W. Kreines, Esq. Counsel avers that his firm represents certain cable-related entities, including one bearing the "Spectrum" name, but that Spectrum Enterprise Holdings Inc. is not related to his actual client and has no responsibility for the premises at issue. He annexes correspondence sent to Plaintiff's counsel in March and April 2025 advising that Plaintiff had named the wrong Spectrum entity and inviting counsel to discuss a stipulation to correct the error. According to Spectrum's counsel, those letters received no response, and Plaintiff has nonetheless proceeded to move for a default judgment against Spectrum Enterprise Holdings Inc.

Spectrum urges that the motion be denied, contends that Plaintiff's Attorney Affirmation of Merit is false and not based on personal knowledge, and requests that the court impose sanctions upon Plaintiff's counsel.

DISCUSSION

I. Legal Standard on an Application for Default Judgment

A party seeking a default judgment must demonstrate: "(1) proper service of the initiating papers; (2) proof of the facts constituting the claim; and (3) proof of the defendant's default" (CPLR § 3215[f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

"A verified complaint, affidavit, or attorney affirmation made on personal knowledge may constitute adequate proof of merit" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]). satisfy the "facts constituting the claim" requirement, the movant need only provide proof sufficient "to enable a court to determine that a viable cause of action exists," not proof establishing entitlement to judgment as a matter of law (*Woodson*, 100 NY2d at 70–71; *Bigio*, 213 AD3d at 481).

At the same time, CPLR§ 3215 "does not contemplate that default judgments are to be rubberstamped 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" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006]).

The Appellate Division, First Department, has long emphasized that there must be an affidavit of facts from the party or from someone with personal knowledge; an attorney's affirmation devoid of an adequate showing of personal knowledge will not suffice (*see Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987][reversing default judgment where "plaintiff's submissions failed to establish a prima facie case" and default motion was supported only by counsel's affirmation and unverified pleadings]; *see also Guzetti*, 32 AD3d at 235 [requiring "some proof" of liability beyond the mere default]).

In short, even where service and default are established, the court must still insist upon competent, non-hearsay proof demonstrating a viable claim. The court is not a rubber stamp.

II. Plaintiff's Failure to Submit a Legally Sufficient Attorney Affirmation of Merit

Applying these principles, the motion falters on the second required element—proof of the facts constituting the claim as against Spectrum. Plaintiff has chosen to proceed not with an affidavit from Ms. Bauer or from a witness with firsthand knowledge, but instead with an Attorney Affirmation of Merit submitted under CPLR § 2106 "in lieu of Plaintiff's Affidavit of Merit."

An attorney affirmation may, in appropriate circumstances, satisfy CPLR § 3215(f); but it must be based on identified personal knowledge or on clearly described documentary sources from which the attorney's knowledge is reliably derived (*see Woodson*, 100 NY2d at 70–71 [accepting attorney affirmation where supported by record proof]; *Bigio*, 213 AD3d at 481 [attorney's affirmation plus verified complaint and documentary evidence sufficient to establish claim]).

Here, counsel's affirmation in support states only that he is "fully familiar with the facts and circumstances surrounding this action" by virtue of being Plaintiff's attorney, and then recites in conclusory fashion that Spectrum, among others, "owned, occupied, managed, maintained, inspected, repaired, and/or controlled" the premises and sidewalk.

The affirmation does **not**:

- identify the source(s) of counsel's asserted personal knowledge (e.g., review of specific records, contracts, permits, or deposition testimony);
- attach or describe any documentary proof tying Spectrum Enterprise Holdings Inc. to the sidewalk or the depressed subway grating; or
- explain how, as a matter of fact, this particular corporate entity had any ownership, occupancy, management, maintenance, or control relationship to the accident location.

In other words, the affirmation is entirely conclusory on the very point that matters: Spectrum's connection to the subject premises. It offers "labels and conclusions" rather than competent factual averments. Under Appellate Division, First Department, precedent, such a bare attorney affirmation—devoid of an articulated basis for personal knowledge and unsupported by documentary evidence—is insufficient to satisfy CPLR § 3215(f) (*see Joosten*, 129 AD2d at 535; *Guzetti*, 32 AD3d at 235 [requiring "some proof of liability" and "prima facie validity" of the uncontested claim]).

The court is thus left with nothing more than counsel's say-so that Spectrum "owned, managed, and controlled" the area. That is not "proof of the facts constituting the claim" within the meaning of CPLR § 3215(f). It is precisely the kind of conclusory, hearsay-laden attorney assertion that the First Department has repeatedly held to be inadequate to support a default judgment.

CPLR § 2106, as amended, certainly permits an affirmation under penalty of perjury "in lieu of" an affidavit, but it does not dilute the substantive requirement that the declarant actually have personal knowledge of the facts to which he or she attests, or that the basis for that knowledge be apparent from the face of the submission (*see generally Woodson*, 100 NY2d at 70–71 [discussing the need for "some firsthand confirmation of the facts"]).

Because Plaintiff has elected to rely on a deficient attorney affirmation instead of a party affidavit or other competent evidentiary submission, the motion fails to satisfy CPLR § 3215(f) as a matter of law.

III. Record Fails to Demonstrate a Viable Claim Against Spectrum

Even if the court were to overlook the formal defects in the Attorney Affirmation of Merit, the present record would still not permit a default judgment against Spectrum. Spectrum's counsel submits an unrefuted affirmation explaining that Spectrum Enterprise Holdings Inc. is not the operating "Spectrum" entity that provides cable services in New York City, and that Plaintiff's counsel was specifically advised, by letters dated March 27 and April 15, 2025, that the wrong entity had been named.

Those letters offered to "work this out" and discuss a stipulation; Plaintiff's counsel did not respond, did not correct the pleading, and did not annex any contrary documentation in support of this motion.

Against that backdrop, Plaintiff's motion papers contain:

- no lease, license, or franchise agreement identifying Spectrum Enterprise Holdings Inc. as an owner, lessee, or permittee of the subject grating or vault;
- no DOT, DOB, or other municipal permit tying this entity to the location;
- no deposition, affidavit, or written statement from any witness with knowledge of Spectrum's connection to the site; and
- no explanation whatsoever of why this particular corporate entity is alleged to be responsible for the sidewalk condition.

The court's role on a default motion is not to adjudicate the ultimate merits, but it must be satisfied that "a viable cause of action exists" against the defaulting defendant (*Woodson*, 100 NY2d at 70–71; *Bigio*, 213 AD3d at 481). Where, as here, the moving papers are utterly silent as to any nonconclusory factual basis for imposing liability on this particular defendant, and the opposition sets out a detailed, unrebutted explanation that the wrong entity has been sued, the court cannot in good conscience find that Plaintiff has met even the modest threshold required by CPLR § 3215(f).

Indeed, setting aside the deficiencies already discussed, the court cannot discern how a default may be found at all when the record suggests that Plaintiff has named the wrong Spectrum entity and offers no substantive response to the opposition's showing to that effect.

To grant a default judgment in these circumstances would convert CPLR § 3215 into exactly the "rubber stamp" that *Guzetti* forbids (32 AD3d at 235). The court declines to do so.

IV. Sanctions Request

Spectrum also asks the court to impose sanctions on plaintiff's counsel on the ground that the Attorney Affirmation of Merit is knowingly false and that counsel ignored defense counsel's correspondence.

The court is deeply troubled by the apparent disconnect between the conclusory allegations in Plaintiff's motion papers and the specific notice provided by Spectrum's counsel that Spectrum Enterprise Holdings Inc. is not the proper entity. Counsel moving for a default judgment bears an obligation of candor to the court; boilerplate assertions of ownership and control, untethered to any identified factual basis, fall short of best professional practice—particularly once counsel has been alerted that a party may have been misidentified.

That said, the present record consists solely of competing attorney affirmations, without the benefit of documentary exhibits, testimony, or further factual development. In the exercise of its discretion, and without condoning the cursory nature of plaintiff's submissions, the court declines to impose sanctions on this motion record alone. Any application for sanctions should be made by separate motion on notice, with a full evidentiary record, and will be considered at that time under 22 NYCRR § 130-1.1.

For all of the foregoing reasons, it is hereby

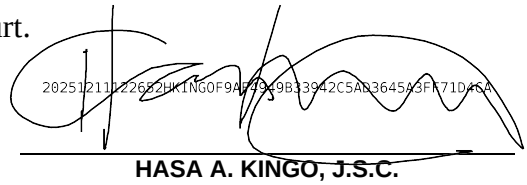
ORDERED that Plaintiff's motion for a default judgment against defendant Spectrum Enterprise Holdings Inc. is denied; and it is further

ORDERED that the denial is without prejudice to a future application, on proper papers, should Plaintiff be able to submit competent, non-hearsay proof establishing: (1) the proper "Spectrum" entity, if any, that had an ownership, occupancy, maintenance, or control relationship to the subject premises; and (2) legally sufficient "proof of the facts constituting the claim" as required by CPLR § 3215(f); and it is further

ORDERED that Spectrum's request for sanctions is denied without prejudice to a separately noticed motion pursuant to 22 NYCRR § 130-1.1; and it is further

ORDERED that the parties shall contact the Differentiated Case Management Part located in Room 103 of the courthouse located at 80 Centre Street, New York, New York to obtain a conference date so that appropriate case-management steps may be taken in light of this decision and order.

This constitutes the decision and order of the court.



12/11/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
		GRANTED	X **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**