

**American Express Travel Related Servs. Co., Inc. v  
Legal Sea Foods, LLC**

2025 NY Slip Op 35203(U)

December 29, 2025

Supreme Court, New York County

Docket Number: Index No. 651283/2021

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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AMERICAN EXPRESS TRAVEL RELATED SERVICES  
COMPANY, INC.

INDEX NO. 651283/2021

Plaintiff,

MOTION DATE 10/16/2025

- v -

MOTION SEQ. NO. 001

LEGAL SEA FOODS, LLC,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20  
were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Zwicker & Associates, P.C., Somerset, NJ (Madge Rosalie  
Buckle, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action, plaintiff AMERICAN EXPRESS TRAVEL RELATED  
SERVICES, INC., moves, by notice of motion (sequence number  
001), pursuant to CPLR § 3215, for an order granting it a  
default judgment against defendant LEGAL SEA FOODS, LLC.

Defendant does not appear or submit opposition to the motion.

For the reasons set forth below, the motion (seq. no. 001)  
is denied as untimely, and the complaint is dismissed.

## BACKGROUND

By complaint dated February 24, 2021, plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES, INC. (plaintiff) commenced this action to recover from defendant LEGAL SEA FOODS, LLC (defendant) the sum of \$309,051.50 due by reason of an alleged default on a consumer credit agreement (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, complaint). The complaint asserts claims for breach of contract and account stated (see id.).

On March 17, 2021, plaintiff served the summons and complaint upon defendant (see NYSCEF Doc. No. 03, affidavit of service; see also CPLR § 311-a [governing personal service on limited liability companies]). Over three years later, plaintiff filed a notice of motion seeking a default judgment against defendant, which was rejected by the Clerk of Court (see NYSCEF Doc. No. 05, notice of motion, dated July 02, 2024). Now, over one year later, plaintiff moves, by corrected notice of motion (seq. no. 01), for an order granting it a default judgment against defendant (see NYSCEF Doc. No. 20, notice of motion, dated September 24, 2025).

## 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, CPLR § 3215 (c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a] default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed" (emphasis added). Where, "a party moving for a default judgment beyond one year from the date of default fails to address any reasonable excuse for its untimeliness, courts may not excuse lateness and 'shall' dismiss the claim pursuant to CPLR § 3215 (c)" (Giglio v NTIMP, Inc., 86 AD3d 301, 308 [2d Dept 2011]; see also Brown v Andreoli, 81 AD3d 498, 498 [1st Dept 2011]).

Here, where plaintiff served defendant on March 17, 2021 (NYSCEF Doc. No. 03), defendant was due to answer or appear in this matter on or about April 06, 2021 (see CPLR § 311-a; see also § CPLR 320 [governing defendant's appearance]). Defendant's failure to do so constituted a default, and plaintiff was required to move for a default judgment within one-year, no later than April 06, 2022 (see CPLR § 3215 [c]). Plaintiff's initial motion (NYSCEF Doc. No. 05) seeking a default judgment against defendant -- which was rejected by the Clerk of Court -- was filed on July 02, 2024, more than two years late. Plaintiff's corrected notice of motion (seq. no. 01), filed on September 24, 2025, is three years untimely and was filed more than one year from the date the Clerk of Court rejected the initial filing (see NYSCEF Doc. No. 20).

While plaintiff argues that "the motion is timely because, prior to the expiration of the twelve-month deadline, plaintiff made continual good faith efforts to settle this matter with defendant" (NYSCEF Doc. No. 14), plaintiff presents no evidence or documentation of such settlement negotiations or discussions (cf. Iorizzo v Matthew, 25 AD3d 762, 764 [2d Dept 2006] [holding that because "plaintiffs presented evidence of a prolonged and tortured history of settlement discussions [with defendant], [] it was not unreasonable for the plaintiffs to delay more than two years [] before moving to enter judgment on default"]

[emphasis added]; see also Cabral v Mueses, 234 AD3d 475, 476 [1st Dept 2025] [holding that dismissal of plaintiff's complaint was warranted where "plaintiff moved for a default judgment against defendant two years and four months after his failure to appear or answer the complaint [and] plaintiff failed to submit any evidence to address the [] period of inactivity"] [emphasis added]). Therefore, plaintiff fails to demonstrate sufficient cause for seeking a default judgment more than one year after defendant's default to avoid dismissal under CPLR § 3215 (c).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01) for a default judgment is denied; it is further

ORDERED that the complaint is dismissed pursuant to CPLR § 3215 (c); and it is further

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

12/29/2025  
DATE

  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input 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"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	