

**Sabater v 842 Edenvie LLC**

2026 NY Slip Op 30018(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 158474/2025

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

-----X

CHARITY SABATER,

Plaintiff,

- v -

842 EDENVIEW LLC, PRO-H DEVELOPMENT INC,  
SKYSTONE GROUP, LLC, THE CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 158474/2025

MOTION DATE 12/23/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion for DEFAULT JUDGMENT.

By notice of motion, Plaintiff Charity Sabater moves for an order entering a default judgment against defendant Skystone Group, LLC (“Skystone”) pursuant to CPLR § 3215(a) and (b) and, requests that this matter be set down for an inquest on damages. Plaintiff also requests an award of costs, attorneys’ fees, and sanctions.

**BACKGROUND AND ARGUMENTS**

This is a personal injury action arising from an alleged trip-and-fall on December 17, 2024, on a temporary pedestrian walkway on Sixth Avenue in Manhattan, near the border of 848 6th Avenue and 842 6th Avenue, New York, New York 10001. Plaintiff alleges that defendants owned, operated, maintained, and/or created the condition that caused the incident.

The action was commenced by filing a summons and verified complaint dated July 3, 2025. Plaintiff avers that Skystone was served with the summons and verified complaint on July 15, 2025, and that more than four months elapsed thereafter without any appearance or responsive pleading from Skystone.

Plaintiff further avers that, after Skystone failed to appear or answer, plaintiff served multiple notices of default, including (i) a “good faith notice” by certified mail on August 14, 2025, and (ii) additional notices of default in compliance with CPLR § 3215(g)(4) on October 2, 2025 and November 10, 2025.

Plaintiff contends that Skystone was properly served, failed to appear or answer within the time required by CPLR § 3012, and has never requested an extension of time or otherwise participated.

Plaintiff argues that the motion is timely and seeks entry of a default judgment, and an inquest on damages thereafter. Plaintiff also requests costs, attorneys' fees, and sanctions based on Skystone's "cavalier disregard" of the litigation.

Skystone submitted no opposition and has made no appearance.

### DISCUSSION

"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" (*see* CPLR § 3215[f]; *Bigio v Gooding*, 213 AD3d 480 [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]).

These requirements are not technicalities. A default judgment is a potent remedy, and the CPLR demands a competent evidentiary showing before the court will impose it. Plaintiff's counsel affirms that the summons and verified complaint were served on Skystone on July 15, 2025, and that an affidavit of service is annexed to the motion papers.

On this record, the court is satisfied that Plaintiff has made the requisite prima facie showing of service for purposes of CPLR § 3215(f). To the extent Skystone wished to contest service, the CPLR required a timely appearance and a proper challenge. Skystone did neither. The court will not indulge silence and inaction as a litigation strategy.

Plaintiff's motion is supported by counsel's affirmation describing the nature of the action and the incident alleged, including the date, location, and claimed injuries (including a right ankle surgery on May 30, 2025). Plaintiff has also submitted an affidavit of merit, in which she attests to the underlying facts and the injuries allegedly sustained. The summons and verified complaint are likewise submitted as exhibits in support of the motion.

At this procedural posture, Plaintiff need not prove damages, nor must Plaintiff establish liability beyond all dispute. The requirement is "proof of the facts constituting the claim" sufficient to demonstrate a viable cause of action (*Woodson*, 100 NY2d at 70). The court finds that Plaintiff has met that threshold through the verified pleading and sworn submission describing the occurrence and the claimed injuries.

Next, Plaintiff demonstrates Skystone's default in multiple, reinforcing ways. First, Plaintiff shows that Skystone failed to answer within the statutory period. CPLR § 3012(a) generally requires service of an answer within 20 days after service of the pleading to which it responds (subject to the 30-day periods applicable to certain modes of service).

Plaintiff's papers identify July 15, 2025 as the service date and confirm that, even more than four months later, no appearance, answer, or reply had been served. Second, Plaintiff demonstrates that Skystone remained in default despite additional notices. Plaintiff served a further notice by certified mail on August 14, 2025. Plaintiff also served additional notices of default in compliance with CPLR § 3215(g)(4) on October 2, 2025 and November 10, 2025.

Third, Plaintiff avers that Skystone has neither appeared nor requested any extension of time. These facts satisfy CPLR § 3215(f)'s requirement of "proof of the defendant's default." Skystone's failure to participate—after being served, after multiple notices, and after substantial time—permits only one conclusion: Skystone has defaulted.

Plaintiff also establishes that this application was brought within one year of the default, as contemplated by CPLR § 3215(c).

Because Plaintiff has demonstrated proper service, proof of the facts constituting the claim, and proof of Skystone's default, plaintiff is entitled to a default judgment against Skystone pursuant to CPLR § 3215. However, this is a personal injury action seeking unliquidated damages. Damages are therefore not a "sum certain" that can be computed by the clerk.

The proper course is entry of default judgment as to liability against Skystone, with the matter to proceed to an inquest on damages. Nevertheless, in light of the presence of multiple remaining defendants in this action, the court finds that conducting an inquest on damages at this juncture would be neither efficient nor prudent. Instead, the issue of damages is more appropriately deferred and addressed in conjunction with the trial of this matter as against the remaining defendants.

Finally, Plaintiff requests costs, attorneys' fees, and sanctions based on Skystone's nonparticipation.

While Skystone's failure to participate in this litigation is plainly improper and not condoned by the court, the present record does not warrant the imposition of attorneys' fees or sanctions. Such relief may be awarded only upon a clear and developed showing grounded in an applicable statutory, contractual, or regulatory basis, including the standards set forth in 22 NYCRR part 130. A defendant's default, without more, does not itself justify an award of attorneys' fees or the imposition of sanctions. Plaintiff, however, remains entitled to recover taxable costs upon the entry of judgment, as provided by law.

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for a default judgment pursuant to CPLR § 3215 is granted to the extent that a default judgment is entered against defendant SKYSTONE GROUP, LLC as to liability; and it is further

ORDERED that the issue of damages as against defendant SKYSTONE GROUP, LLC is severed, and that an inquest on damages shall be conducted at a date to be determined and scheduled in conjunction with the trial of this action as against the remaining defendants; and it is further

ORDERED that Plaintiff's request for attorneys' fees and sanctions is denied, without prejudice to an application supported by an appropriate legal basis and evidentiary showing; and it is further

ORDERED that Plaintiff shall serve a copy of this decision and order with notice of entry upon all parties and upon the County Clerk; and it is further

ORDERED that following service, the Clerk of the Court is directed to enter judgment in Plaintiff's favor as against defendant SKYSTONE GROUP, LLC.

This constitutes the decision and order of the court.

1/6/2026  
DATE

HASA A. KINGO, 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