JPMorgan Chase Bank, N.A. v Rubin
2026 NY Slip Op 30328(U)
January 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 530592/2024
Judge: Menachem M. Mirocznik
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 13th of January 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

JPMorgan Chase Bank, National Associatio

Plaintiff,

-against-

Andrew Rubin; JPMorgan Chase Bank, N.A.; City of New York Environmental Control Board; City of New York Parking Violations Bureau; City of New York Transit Adjudication Bureau and "JOHN DOE", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises,

Defendants.

Index No. 530592/2024

Decision and Order
(Motion Seq. 1)

Papers	Numbered
Notice of Motion	NYSCEF Doc. 31-40

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision and Order as follows:

RELEVANT FACTUAL AND PROCEDURAL HISTORY

This action was commenced on November 12, 2024, seeking to foreclose a mortgage ("mortgage") executed by defendant Andrew Rubin (the "defendant") encumbering the property known 249 Eldert Street, Brooklyn, NY 11207 (the "property").

Defendant did not timely appear or answer the complaint.

Settlement conferences were held on April 8, 2025, April 23,2025 and May 6, 2025 after which the matter was released from the settlement conference part due to non-appearance.

On July 16, 2025, plaintiff filed the instant motion seeking a default judgment and order to reference. Plaintiff contends that it demonstrated entitlement to entry of a default judgment and order of reference with proof of service of the summons and complaint, proof of defendant's default in answering and proof of the default under the terms of the mortgage.

DISCUSSION

I. PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT MUST BE DENIED PURSUANT TO CPLR 3215[f]

A. Introduction

This motion turns on a settled principle of New York law: the entry of a default judgment is not automatic and is never ministerial. CPLR 3215[f] conditions the granting of a default judgment upon the movant's submission of competent, admissible proof establishing the facts constituting the claim and the default. A defendant's failure to appear does not relieve the court of its independent obligation to determine whether those statutory requirements have been satisfied.

Default judgments are not to be "rubber-stamped" upon a showing of jurisdiction and nonappearance. Rather, courts retain a continuing adjudicatory duty to assess whether the movant has demonstrated a viable cause of action through nonhearsay evidence. The absence of opposition does not diminish that duty, nor does it permit the court to overlook evidentiary deficiencies in the movant's submissions.

Where a default judgment motion is supported by affidavits lacking personal knowledge, conclusory assertions, references to unproduced business records, or records for which a foundation for admissibility has not been laid, the proof is legally insufficient under CPLR 3215[f]. Such submissions do not constitute competent evidence and cannot support the entry of judgment. Courts not only possess the inherent authority, ***but has the obligation,*** to deny default judgment motions where the movant has failed to provide admissible proof, including sua sponte, because the statute does not authorize judgment in the absence of a proper evidentiary showing.

In sum, CPLR 3215[f] imposes substantive proof requirements that must be satisfied before a judgment may be entered. Default does not cure inadmissible proof, nor does it divest the court of its obligation to ensure that a viable cause of action has been established through competent evidence. Where that showing has not been made, denial of the motion is required.

B. CPLR 3215[f] Imposes Specific Evidentiary Requirements For Default Judgment Applications

CPLR 3215[f] expressly conditions the entry of a default judgment upon the movant's submission of competent proof. The statute requires, proof of service of the summons and complaint, the default and "proof of the facts constituting the claim... by affidavit made by the party" CPLR 3215[f]. This statutory language is not precatory. It reflects a deliberate legislative judgment that default judgments may be entered only upon a proper evidentiary showing, not merely upon a defendant's failure to appear or answer.

"Hence a trio of affidavits is the ideal composition of a default application: the server's affidavit of service, the plaintiff's affidavit of merits, and the lawyer's affidavit of the default." *Siegel, N.Y. Prac.* § 295 (6th ed.)

Each of the elements must be established. See e.g. *Levi v Oberlander*, 144 AD2d 546, 547 [2d Dept 1988]["A review of the record indicates that plaintiff failed to show that the defendants

were properly before the court by virtue of the plaintiff's effecting valid service of a summons and complaint upon them."]; *U.S. Bank N.A. v Simpson*, 216 AD3d 1043, 1045 [2d Dept 2023]["Laxner's factual assertions based upon those records constituted inadmissible hearsay, and her affidavit was insufficient to demonstrate proof of the facts constituting the claim"];

"Additionally, a motion for leave to enter a default judgment must be supported by what has been colloquially termed a "non-military affidavit." This requirement is not mandated by the CPLR but rather is derived from federal law." *Tri-Rail Designers & Builders, Inc. v Concrete Superstructures, Inc.*, 2025 NY Slip Op 06209, 2 [2d Dept Nov. 12, 2025]

C. Courts Have No Ministerial Duty to Enter Default Judgments, Rather Courts Have The Obligation And Duty To Deny Same In The Absence Of Strict Compliance With The Requirements Of CPLR 3215[f].

The entry of a default judgment is not a mechanical or ministerial act. The Appellate Division has made clear that "the granting of a default judgment does not become a 'mandatory ministerial duty' upon a defendant's default" *Gagen v Kipany Prods. Ltd.*, 289 AD2d 844 [3d Dept 2001], *quoting Matter of Dyno v Rose*, 260 AD2d 694 [3d Dept 1999].

Rather, courts have the obligation and duty to determine whether the movant has established a viable cause of action through admissible proof. Indeed, the "Supreme Court ***must*** determine whether the motion [for leave to enter a default judgment] was supported with enough facts to enable the court to determine that a viable cause of action exists...as [t]here is no mandatory ministerial duty to enter a default judgment against a defaulting party" *Superior Dental Care, P.C. v Hoffman*, 81 AD3d 632 [2d Dept 2011][internal quotations marks omitted and emphasis added]; See also *McGee v Dunn*, 75 AD3d 624 [2d Dept 2010]["the court ***must*** determine whether the motion was supported with "enough facts to enable [the] court to determine that a viable cause of action exists"][emphasis added]; *Levi v Oberlander*, 144 AD2d 546, 547 [2d Dept 1988]["Absent such proof, ***no*** default judgment may be entered."][emphasis added] *Nemetsky v Banque Dev. De La Republique Du Niger*, 59 AD2d 527, 527 [2d Dept 1977]["***No*** default judgment may be entered absent proof of service of a summons and complaint."][emphasis added] *affd sub nom. at* 48 NY2d 962 [1979]

The Second Department has reaffirmed this principle in recent decisions, holding that courts "do not have a mandatory, ministerial duty to grant default judgment motions, as they retain the ***obligation*** to determine whether the moving party has established a viable claim" *Wells Fargo Bank, N.A. v St. Louis*, 229 AD3d 116 [2d Dept 2024][emphasis added].

CPLR 3215 does not contemplate that default judgments are to be "rubberstamped once jurisdiction and a failure to appear have been shown" *Feffer v Malpeso*, 210 AD2d 60 [1st Dept 1994]

Thus, a default does not divest the court of its adjudicatory function and the lack of opposition to a default judgment motion does not relieve the court of its obligation to scrutinize the movant's proof. As the Appellate Division has held, "[t]he lack of opposition does not negate this judicial function" of assessing the sufficiency of the movant's proof in support of a motion for default judgment. See *Matter of Dyna v Rose*, 260 AD2d 694 [3d Dept 1999]. Otherwise, there

would be no adjudicatory function for this Court to exercise.[1]

Indeed, even the existence of opposition on grounds other than the sufficiency of the proof constituting the claim does not negate this essential judicial function. See *Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]["That defendant chose to oppose the motion on the ground of lack of jurisdiction should not be deemed a waiver of proof of the facts constituting the claim. Defendant should not be put in a worse position for having chosen to oppose the motion than she would have been in had she not opposed it."]

Where, as here, the court cannot determine from the submissions whether a viable cause of action exists, denial of the motion is not only permissible, but required. *See First Franklin Fin. Corp. v Alfau*, 157 AD3d 863, 865 [2d Dept 2018].

The Appellate Division is unanimous that the entry of a default judgment is not a ministerial act; rather, the court retains an independent obligation to determine whether the moving party has established a viable cause of action.

Accordingly, a court must deny an unopposed default judgment motion where the proof submitted is deficient, inadmissible, or fails to demonstrate a viable cause of action.

D. The Courts Have A Duty To Sua Sponte Scrutinize Proof Of Compliance With CPLR 3215[f] Including The Requirment For The Submission Of Admissible Nonhearsay Proof

Because courts retain an independent adjudicatory obligation under CPLR 3215[f], they must deny default judgment motions sua sponte where the movant fails to provide adequate admissible proof. The statute does not authorize courts to enter judgment blindly, nor does a defendant's default waive the statutory evidentiary prerequisites imposed upon the movant.

Courts must be satisfied that movants have provided "***nonhearsay*** confirmation of the factual basis constituting a prima facie case" before granting default judgment. *State v Williams*, 44 AD3d 1149 [3d Dept 2007][Emphasis Added]; *See 333 Cherry LLC v N. Resorts, Inc.*, 66 AD3d 1176, 1179 [3d Dept 2009][movant bears burden of submitting "***nonhearsay*** proof confirming the factual basis for their claim in support of their motion for a default judgment"][emphasis added]; *State v Williams*, 73 AD3d 1401, 1403 [3d Dept 2010][movant must "present sufficient ***nonhearsay*** facts to demonstrate the existence of a viable cause of action"][emphasis added].

Indeed, courts routinely deny default judgment motions where the movant fails to submit affidavits based on personal knowledge or otherwise fails to provide nonhearsay confirmation of the claim. *See Martinez v Reiner*, 104 AD3d 477, 478 [1st Dept 2013][default judgment denied where proof was "purely hearsay, devoid of evidentiary value, and thus insufficient to support entry of a judgment pursuant to CPLR 3215"]; *Feffer v Malpeso*, 210 AD2d 60 [1st Dept 1994]; *Joosten v Gale*, 129 AD2d 531 [1st Dept 1987][same].

An affidavit that merely recites conclusions, relies on unproduced business records, or fails

[1] This Court is puzzled by certain decisions referring to the Court's responsibility to assess compliance with CPLR 3215 as a "discretionary obligation". See e.g. *Newrez, LLC v City of Middletown*, 216 AD3d 655 [2d Dept 2023]

to lay a proper foundation under CPLR 4518[a] does not satisfy CPLR 3215[f]. *See HSBC Bank USA, NA. as Tr.for ACE Sec. Corp., Home Equity Loan Tr., Series 2007-HE4 v Greene,* 190 AD3d 417, 418 [1st Dept 2021][default judgment against the non-appearing defendants denied where affiant "did not say that he was familiar with plaintiffs record-keeping practices and procedures [and] [t]hus, his affidavit did not constitute a proper foundation for the admission of the records [and] "[affidavit] was hearsay, since the records were not submitted with the affidavit"]; *Cary v Cimino,* 128 AD3d 1460, 1460-61 [4th Dept 2015][hearsay affidavit made by affiant without personal knowledge does not constitute "adequate 'proof of the facts constituting the claim', quoting CPLR 3215[f]; motion for default judgment denied]; *see also Knudsen v Green Mach. Landscaping, Inc.,* 223 AD3d 792, 793 [2d Dept 2024][attorney-verified pleading constituted hearsay and hence did not satisfy CPLR 3215[f]].

The well-settled rule that an attorney-verified pleading is insufficient to support a default judgment provides an apt and controlling analogy. Courts have repeatedly held that a complaint verified by counsel, who lacks personal knowledge, is "pure hearsay, utterly devoid of evidentiary value" *Feffer v Malpeso,* 210 AD2d at 61; *Joosten v Gale,* 129 AD2d 531 [1st Dept 1987]; *Martinez v Reiner,* 104 AD3d 477 [1st Dept 2013].

The Second Department has likewise held that, while a verified complaint may serve as the affidavit of facts under CPLR 3215[f], it must contain "evidentiary facts from a person with personal knowledge", and a pleading verified by an attorney pursuant to CPLR 3020(d)(3) is insufficient to establish its merits. *Triangle Props. #2, LLC v Narang,* 73 AD3d 1030 [2d Dept 2010]; *DLJ Mtge. Capital, Inc. v United Gen. Tit. Ins. Co.,* 128 AD3d 760 [2d Dept 2015]; See also *U.S. Bank N.A. v Simpson,* 216 AD3d 1043, 1045 [2d Dept 2023]["Laxner's factual assertions based upon those records constituted inadmissible hearsay, and her affidavit was insufficient to demonstrate proof of the facts constituting the claim"]; *799 Crown St., LLC v Leblanc,* 203 AD3d 1117 [2d Dept 2022]["Thus, his factual assertions based upon those records constituted inadmissible hearsay, and his affidavit was insufficient to demonstrate proof of the facts constituting the claim"]

Even where the complaint is verified by a lender's servicer relying on the business records exception to the hearsay rule, sufficient foundation is required to satisfy an evidentiary burden. See *Toorak Capital Partners, LLC v 15 Dewey Place Corp.,* 2025 NY Slip Op 06746 [2d Dept Dec. 3, 2025]["the verified pleading has evidentiary value only if the verifier has personal knowledge of the facts…In this action, the complaint was verified by Christopher Redburn, an asset manager for Cohen Financial, the plaintiff's "special servicer and authorized agent." However, Redburn did not lay any foundation for his basis of knowledge or for the admission of the business records annexed to the complaint. Moreover, those records did not evince 15 Dewey's default on the loan."]

There is no principled basis to treat other forms of hearsay more favorably. An affidavit from a party or servicer lacking personal knowledge *(See Bank of Am., NA. v Barnett,* 241 AD3d 1234, 1238 [2d Dept 2025]), an affidavit that merely references but does not attach business records *(See Bank of New York Mellon v Glasgow,* 232 AD3d 754, 755 [2d Dept 2024]), or an affidavit that fails to lay a proper CPLR 4518[a] foundation *(See Nationstar Mtge., LLC v Ricks,* 241 AD3d 829, 832 [2d Dept 2025]) is no less hearsay than an attorney-verified pleading. Hearsay does not become admissible by virtue of its label.

It is thus well settled across all Departments of the Appellate Division that hearsay evidence is insufficient to sustain a default judgment.[2]

Accordingly, where, as here, a motion for a default judgment is not supported by admissible evidence, there can be only one outcome: "A failure to submit the proof required by CPLR 3215[f] ***should*** lead a court to deny an application for a default judgment". *Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 203 [2013][Emphasis Added].

E. **Application**

Here, plaintiff failed to demonstrate the facts constituting the claim as required by CPLR 3215[f]. The motion is supported by Nicole L. Smiley ("Ms. Smiley" or Smiley Affidavit") a purported vice president of plaintiff. However, Ms. Smiley's contentions are inadmissible hearsay and she fails to annex the business records necessary to support the application.

"There is no requirement that a plaintiff in a foreclosure action rely on any particular set of business records to establish a prima facie case, so long as the plaintiff satisfies the admissibility requirements of CPLR 4518(a), and the records themselves actually evince the facts for which they are relied upon." *Citigroup v Kopelowitz*, 147 AD3d 1014, 1015 [2d Dept 2017]

"Although, [t]he foundation for admission of a business record usually is provided by the testimony of the custodian, the author or some other witness familiar with the practices and procedures of the particular business…it is the business record itself, not the foundational affidavit, that serves as proof of the matter…Accordingly, [e]vidence of the contents of business records is admissible only where the records themselves are introduced…Without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay" *Bank of NY Mellon v Gordon*, 171 AD3d 197 [2d Dept 2019][internal citations and quotation marks omitted]; See also See *U.S. Bank N.A. v Pickering-Robinson*, 197 AD3d 757 [2d Dept 2021]["However, while the Lee affidavit was sufficient to lay a proper foundation for the admission of a business record pursuant to CPLR 4518 (a)…Lee failed to identify the records upon which she relied in making the statements, and the plaintiff failed to submit copies of the records themselves."]; *Deutsche Bank Trust Co. Ams. v Miller*, 198 AD3d 867 [2d Dept 2021]["Moreover, even if Lee's affidavit set forth a proper foundation for the admissibility of the unspecified records he relied on…Lee failed to identify the records upon which [ ]he relied in making the statements, and the plaintiff failed to submit copies of the records themselves…It is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted"][internal citations and quotation marks omitted]

Indeed, "[w]ithout business records proving the matter asserted, [plaintiff]'s "unsubstantiated and conclusory" statement, by itself, [is] insufficient…" *Wilmington Sav. Fund Socy., FSB v Kutch*, 202 AD3d 1030, 1033 [2d Dept 2022]; *JPMorgan Chase Bank, N.A. v Bonilla*, 227 AD3d 788, 790 [2d Dept 2024]["Without business records proving the matter asserted, Ranaldi's "unsubstantiated and conclusory" statement, by itself, was insufficient…"]

---

[2] Leading commentators of the CPLR agree that hearsay evidence does not constitute adequate "proof of the facts constituting the claim" under CPLR 3215[f] and hence cannot sustain a motion for a default judgment. *See* Hon Mark C. Dillon, 2025 Supplementary Practice Commentary, McKinney's Cons Laws of NY, Book 7B, CPLR3215:21.

Here, Ms. Smiley does not attach a payment history or other sufficient evidence demonstrating defendants default in payment. While, Ms. Smiley references a notice of default annexed to her affidavit as proof, the same is insufficient to demonstrate defendant's default in payment under the terms of the mortgage. See *Wilmington Sav. Fund Socy., FSB v E39 St., LLC*, 230 AD3d 1191 [2d Dept 2024]["Contrary to the plaintiff's contention on appeal, the notice of default annexed to Shnayder's affirmation was insufficient to establish the alleged default in payment"]; *Deutsche Bank Trust Co. Ams. v Tagor*, 238 AD3d 983, 986 [2d Dept 2025]["Contrary to the plaintiff's contention, the 90-day notices and notices of default otherwise submitted in support of its motion were insufficient to establish the defendant's alleged default in payment."]

Therefore, her contentions and records she attempts to introduce are inadmissible hearsay and insufficient sustain plaintiff's burden to demonstrate the facts constituting the claim as required by CPLR 3215[f].

Accordingly, it is hereby:

ORDERED, that plaintiff's motion is DENIED.

This constitutes the decision and order of the Court.

ENTER:

Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
2026 JAN 27 A 10:42