

Carrington Mtge. Servs., LLC v Moore

2026 NY Slip Op 30537(U)

January 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 502193/2022

Judge: Menachem M. Mirocznik

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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 27th of January 2026

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

CARRINGTON MORTGAGE SERVICES, LLC,

Plaintiff,

-against-

MAURICE MOORE; VIVIAN MOORE HARTLEY; UNITED STATES OF AMERICA ACTING ON BEHALF OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK; "JOHN DOE #1" through "JOHN DOE #10," said names being fictitious and unknown to plaintiff, intended to be possible tenants or occupants of the premises, or corporations, persons, or other entities having or claiming a lien upon the mortgaged premises,

Defendants.

Index No. 502193/2022

**Decision and Order
(Motion Seq. 3)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 118-139

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 January 23, 2022, seeking to foreclose a mortgage ("mortgage") executed by defendant Vivian Moore Hartley (the "defendant") encumbering the property known 299 Evergreen Avenue, Brooklyn, NY 11221 (the "property").

December 1, 2022, the Court granted plaintiff's motion to serve defendant by publication and to appoint a guardian ad litem to the extent that a guardian was appointed and service was authorized by overnight mail.

On March 19, 2025 the Court granted plaintiffs motion to amend the caption to substitute Carrington Mortgage Services LLC as party plaintiff and to add Maurice Moore to the caption as a party defendant.

None of the defendants timely answered the complaint.

Eight settlement conferences were held between February 14, 2023 and April 30, 2024 after which the matter was released from the settlement conference.

On August 5, 2025, plaintiff filed the instant motion seeking a default judgment and order of 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, NA. 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 Requirement 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].

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]

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 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 Sheryl Brazee (“Ms. Brazee” or “Brazee Affidavit”) a purported Assistant Secretary of Compu-Link d/b/a Celinek (“Celinek”), the alleged attorney in fact for plaintiff.

However, no servicing agreement or power of attorney is annexed to Ms. Brazee’s affidavit. Therefore, the affiant and Celinek’s authority has not been established and plaintiff failed to establish the facts constituting the claim pursuant to CPLR 3215[f]. See e.g. *HSBC Bank USA, N.A. v Betts*, 67 Ad3d 735 [2d Dept 2009]. While, a power of attorney is annexed to plaintiff counsel’s affirmation in support, the same has not been authenticated and Mr. Borowczyk makes no reference to the power of attorney as his source of authority. Moreover, the power of attorney is expressly limited by certain governing documents and agreements that have not been proffered.

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'S OFFICE

FEB 11 2026

FILED

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.