Deutsche Bank Natl. Trust Co. v Blake
2026 NY Slip Op 31697(U)
April 17, 2026
Supreme Court, Kings County
Docket Number: Index No. 529470/2023
Judge: Kerry J. Ward
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At an IAS Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17 day of April, 2026

PRESENT:

HON. KERRY WARD,
Justice.

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DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY ABS CAPITAL I INC. TRUST 2006-HE3,

Index No.: 529470/2023

Plaintiff,

-against-

WINSTON BLAKE, LESLIE E. BLAKE, KEN GRIFFITH, CHRISTINA GRIFFITH, BHOLA RAMSUNDAR, BANK OF AMERICA, N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR BANK OF AMERICA, N.A., NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, CITY REGISTER OF THE CITY OF NEW YORK, THE BANK OF NEW YORK MELLON, AS COLLATERAL AGENT AND CUSTODIAN FOR THE NYCTL 1998-2 TRUST, THE NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY DEPARTMENT OF FINANCE, and JOHN AND JANE DOE "1" through "10",

Defendants.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	72-86, 139-162
Opposing Affidavits/Answer (Affirmations)	
Affidavits/ Affirmations in Reply	
Other Papers:	

Upon the foregoing papers, plaintiff Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE3 ("Plaintiff") moves for an order in the present quiet title[1] action: (i) pursuant to CPLR 3215 (a) and (d), holding that defendants Winston Blake ("Mr. Blake"), Leslie E. Blake ("Ms. Blake") (together with Mr. Blake, the "Blake Defendants"), Ken Griffith ("Mr. Griffith"), Christina Griffith ("Ms. Griffith") (together with Mr. Griffith, the "Griffith Defendants"), Bhola Ramsundar ("Ramsundar"), Mortgage Electronic Registration Systems, Inc. ("MERS") and The Bank of New York Mellon, as Collateral Agent and Custodian for the NYCTL 1998-2 Trust ("BNY") (together with the Blake Defendants, the Griffith Defendants, Ramsundar and MERS, the "Non-Appearing Defendants") are in default; (ii) directing that further proceedings for the entry of a default judgment against the Non-Appearing Defendants be conducted at the time of summary judgment or trial; or (iii) in the alternative, Plaintiff seeks a default judgment against the Non-Appearing Defendants (motion sequence number 5).

The branch of Plaintiff's motion (motion sequence number 5) in which Plaintiff seeks an order holding that the Non-Appearing Defendants are in default is granted.

The branch of Plaintiff's motion (motion sequence number 5) seeking an order directing that further proceedings for the entry of a default judgment against the Non-Appearing Defendants be conducted at the time of summary judgment or trial is granted.

[1] A quiet title action is brought to adjudicate disputes over real property ownership, address boundary line disputes between neighboring owners, clear clouds on a title and/or to establish clear title. As RPAPL § 1501 (1) provides: "Where a person claims an estate or interest in real property . . . such person . . . may maintain an action against any other person . . . to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make."

The branch of Plaintiff's motion seeking, in the alternative, a default judgment against the Non-Appearing Defendants, is denied with leave to renew on proper papers.

BACKGROUND

The Genesis of the Parties' Dispute and the Lawsuit

This quiet title action pits Plaintiff, a banking institution, against neighboring real property owners. Plaintiff commenced the present proceeding to remove clouds upon, and quiet title, by establishing its alleged mortgage interest in the parcel of real property known as 869 Belmont Avenue, Brooklyn, New York 11208 owned by the Blake Defendants ("New Lot 38") (*see* NYSCEF Doc No. 72, Amended Complaint ¶¶ 1, 4). In this action, Plaintiff further seeks a declaratory judgment that the Blake Defendants' fee interest in New Lot 38 is encumbered by Plaintiff's purported mortgage and that Plaintiff's lien pursuant to such mortgage is a first mortgage lien against such property, superior to the interest of all defendants ("Defendants") (*id.*).[2]

Moreover, Plaintiff seeks to resolve alleged documentation errors associated with an incomplete attempt on the part of Ramsundar, the developer and original owner of the property, to combine that portion of land formerly known as 871, 869 and 867 Belmont Avenue, Brooklyn, New York 11208, consisting of Block 4024, Lots 37, 38 and 39 in Brooklyn, New York,[3] and thereafter to subdivide the three combined lots into two equal size lots (*id.* ¶ 2). Plaintiff contends that the relief it seeks in this action hews closely with Ramsundar's original intent to combine the three Original Lots and subdivide into two

[2] While a brief recitation of facts is set forth in this decision, as shall become apparent, given the procedural posture of this action, the substance of the dispute amongst the parties shall not affect the determination of the present motion.
[3] The lots in question shall be referred to as the "Original Lots."

equal size lots: (i) the property known as 871 Belmont Avenue, Brooklyn, New York 11208, owned by the Griffith Defendants ("New Lot 37") (*id.*) and (ii) the aforementioned New Lot 38 owned by the Blake Defendants, known as 869 Belmont Avenue, Brooklyn, New York 11208 (*id.* ¶ 5).

Specifically, Plaintiff asserts that Ramsundar, the initial owner of the Original Lots, envisioned combining the three Original Lots and subsequently subdividing them into two equally sized lots, such that one lot would consist of Lot 37 and half of Lot 38 (namely, New Lot 37), while the other lot would be comprised of the remaining half of Lot 38 and Lot 39 (to wit, New Lot 38) (*see* NYSCEF Doc No. 140, Han affirm. ¶ 5). Plaintiff avers that Ramsundar intended to develop two single-family houses on New Lot 37 as well as New Lot 38 (*id.*). Plaintiff claims that, while Ramsundar completed the development and construction of the two single-family homes on New Lot 37 and New Lot 38, the intended subdivision of the Original Lots into New Lot 37 and New Lot 38 never came to fruition (*id.*).

Plaintiff avers that although the issue concerning the subdivision of the lots in question remained unresolved, Ramsundar thereafter sold each of the single-family homes to the Blake Defendants and the Griffith Defendants, respectively (*id.*). Plaintiff alleges that notwithstanding its efforts to address the error in the subdivision without resorting to judicial intervention, the Blake Defendants as well as the Griffith Defendants proved uncooperative in addressing the incomplete subdivision conundrum, leaving Plaintiff with no alternative but to institute this action on October 12, 2023 (*id.*).

Further, Plaintiff seeks monetary damages from the Griffiths for alleged unpaid real property taxes that may encumber Plaintiff's mortgage-related interest in New Lot 38 (*see* NYSCEF Doc No. 72, Amended Complaint ¶¶ 3).

The Institutional Parties to the Action

Defendant Bank of America, N.A. ("BOA"), a banking institution, is the purported mortgagee in connection with New Lot 37 owned by the Griffith Defendants (*id.* ¶ 8) and MERS acts as a nominee for BOA with respect to BOA's mortgage (the "BOA Mortgage") (*id.* ¶¶ 8-9). Plaintiff asserts that BNY is the holder of tax lien certificates as to Original Lot 39 (*id.* ¶ 12). Plaintiff claims that defendant New York City Environmental Control Board ("ECB") is potentially a judgment creditor of the Blake Defendants and Ramsundar (*id.* ¶ 10). Plaintiff contends that Defendant City Register of the City of New York ("City Register") may have an interest in the lots at issue in this proceeding in connection with the subdivision of New Lots 37 and 38 (*id.* ¶ 11).

Defendant The New York City Department of Finance ("DOF") is an agency that records and maintains official real estate-related documents in New York City, including deeds (*id.* ¶ 14). Defendant The New York City Department of Buildings ("DOB") is an agency that reviews and approves building plans as well as performs permitting, licensing and inspection functions concerning real estate (*id.* ¶ 13).

DISCUSSION

The Viability of Plaintiff's Motion for an Order Holding that the Non-Appearing Parties Are in Default

Plaintiff commenced this action by filing a summons and complaint on October 12, 2023 (the "Original Complaint") (*see* NYSCEF Doc No. 141, Original Complaint at 1) and thereafter served this pleading on Defendants. Ultimately, on August 30, 2024, the court issued a decision and order granting Plaintiff's motion to serve an amended complaint (the "Amended Complaint") (*see* NYSCEF Doc No. 149, decision and order at 7; *see also* NYSCEF Doc No. 72, Amended Complaint at 1).

After service of the Amended Complaint, the following Defendants served answers to the Amended Complaint: (i) the ECB, the DOB and the DOF (collectively, the "City Defendants"), which served an answer on September 27, 2024 (*see* NYSCEF Doc No. 150, answer to amended complaint at 1); (ii) the Griffith Defendants, which served an answer on September 30, 2024 (*see* NYSCEF Doc No. 153, verified answer at 1); and (iii) BOA, which served an answer on October 18, 2024 (*see* NYSCEF Doc No. 153, verified answer at 1).

In contrast, a review of the NYSCEF database establishes that the following Defendants did not serve an answer, or otherwise respond, to the Amended Complaint: (i) the Blake Defendants; (ii) Ramsundar; (iii) MERS; and (iv) BNY (*see* NYSCEF Doc Nos. 1-162). Notably, an analysis of the affidavits of service generated in conjunction with the Amended Complaint reveals that Plaintiff duly served the Amended Complaint on the Defendants in question, namely, (i) the Blake Defendants (*see* NYSCEF Doc No. 155,

November 26, 2024 affidavit of service on Ms. Blake at 1; *see also* NYSCEF Doc No. 156, November 21, 2024 affidavit of service on Mr. Blake at 1); (ii) Ramsundar (*see* NYSCEF Doc No. 152, October 16, 2024 affidavit of service on Ramsundar at 1); (iii) MERS (*see* NYSCEF Doc No. 151, October 1, 2024 affidavit of service on MERS at 1); and (iv) BNY (*see* NYSCEF Doc No. 160, August 25, 2025 affidavit of service on BNY at 1).

Further, on June 6, 2025, Plaintiff filed a motion to strike the Griffith Defendants' Answer to the Amended Complaint owing to their failure to adhere to their discovery obligations. This unopposed motion was granted pursuant to an order issued by Justice Leon Ruchelsman dated June 27, 2025, which provides as follows:

> Plaintiff's motion to strike . . . is granted there being no opposition. Defendants Ken Griffith and Christina Griffith failed to comply with this court's order of 4/7/25 which specifically stated that the failure to comply will result in appropriate sanctions pursuant to CPLR 3126. No reasonable excuse for the failure to comply with the order so as to avoid the adverse impact of said order was provided, nor was opposition to the relief sought in the motion filed. Where a party fails to comply with the terms of a conditional order prior to the deadline imposed therein, the conditional order becomes absolute (*Wolf Props. Assoc., L.P. v Castle Restoration, LLC*, 174 AD3d 838, 841 [2019]). Accordingly, the answers of defendants Ken Griffith and Christina Griffith are stricken.

(NYSCEF Doc No. 159, order at 1).

Justice Ruchelsman's order dated June 27, 2025 striking the Griffith Defendants' Answer to the Amended Complaint was served with notice of entry on July 14, 2025 (*see* NYSCEF Doc No. 159, notice of entry of order at 1). Since their Answer to the Amended Complaint was stricken, the Griffith Defendants did not take any action to appeal the subject order and their time to do so has expired (*see* NYSCEF Doc Nos. 1-162).

Based on the foregoing, the Non-Appearing Defendants (the Blake Defendants, Ramsundar, MERS, the Griffith Defendants and BNY) have either failed to answer, or otherwise respond to, the Amended Complaint, which was duly served upon them as reflected in the aforementioned affidavits of service, or have had their answer stricken due to their failure to comply with their court-ordered discovery obligations. In these circumstances, the branch of Plaintiff's motion (motion sequence number 5) in which Plaintiff seeks an order holding that the Non-Appearing Defendants are in default is granted (*see Bank of N.Y. v Samuels*, 107 AD3d 653, 653 [2d Dept 2013] [Second Department affirmed Supreme Court's determination that defendant, which failed to serve an answer, or to respond, to the complaint, was in default in that the "process server's affidavits of service constituted prima facie evidence that the [defendant] . . . was validly served"]; *Wachovia Bank, N.A. v Carcano*, 106 AD3d 726, 726 [2d Dept 2013] [Second Department held that defendants, which failed to serve an answer, or otherwise respond, to the complaint, were properly found by the trial court to be in default as "a process server's sworn affidavit of service is prima facie evidence of proper service"]; *Indymac Fed. Bank FSB v Quattrochi*, 99 AD3d 763, 764 [2d Dept 2012] ["the affidavit of the plaintiff's process server constituted prima facie evidence of proper service"]).[4]

[4] As detailed below, while the branch of Plaintiff's motion in which Plaintiff seeks an order holding that the Non-Appearing Defendants are in default is granted, such determination does not constitute the grant to Plaintiff of a default judgment against the Non-Appearing Defendants at this juncture.

The Branch of Plaintiff's Motion Seeking to Defer the Default Judgment Determination Until Summary Judgment or Trial

Defendants fall into two distinct categories: First, BOA, ECB, City Register, DOB and DOF (collectively, the "Co-Defendants") have appeared in this proceeding, and their responsive pleadings have not been adjudicated. Second, as set forth above, the Non-Appearing Defendants have either failed to appear or their responsive pleading was stricken due to non-compliance with their discovery obligations.

Given the dichotomy between the two categories of Defendants, coupled with the narrowly circumscribed one-year period governing default judgments pursuant to CPLR 3215 (c),[5] Plaintiff moves the court to hold that the Non-Appearing Defendants are in default and to direct that further proceedings for the entry of a default judgment against the Non-Appearing Defendants be postponed until such time as the court issues a determination, on summary judgment or at trial, concerning the alleged incomplete subdivision of the properties formerly known as 871, 869 and 867 Belmont Avenue, Brooklyn, New York, consisting of Block 4024, Lots 37, 38 and 39 (the "Original Lots) (*see* NYSCEF Doc No. 140, Han affirm. ¶ 4).

Under CPLR 3215 (c), it is incumbent on a plaintiff "to take proceedings for the entry of judgment within one year after the default," lest the court dismiss the complaint as abandoned. However, where, as here, some defendants have answered, while other defendants have failed to appear, CPLR 3215 (d) permits the court to direct that

[5] CPLR 3215 (c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned."

proceedings for the entry of a default judgment be conducted at the time of the court's determination of the claims asserted against the defendants who have answered, which provision supplants the requirement under CPLR 3215 (c) that a plaintiff take proceedings for the entry of judgment within one year of the default. As CPLR 3215 (d) provides:

> Whenever a defendant has answered and one or more other defendants have failed to appear, plead, or proceed to trial of an action reached and called for trial, notwithstanding the provisions of subdivision (c) of this section, upon application to the court within one year after the default of any such defendant, the court may enter an ex parte order directing that proceedings for the entry of a judgment or the making of an assessment, the taking of an account or proof, or the direction of a reference be conducted at the time of or following the trial or other disposition of the action against the defendant who has answered.

In short, pursuant to CPLR 3215 (d), the court is vested with the discretion to direct that proceedings for entry of a default judgment be extended beyond one year from the defendant's default in cases featuring, as here, several defendants, some of which failed to appear while others duly appeared. This action comes within the purview of CPLR 3215 (d) since, while the Co-Defendants have appeared and answered, the Non-Appearing Defendants have either failed to appear despite proper service, or had their answer stricken by the court.

Notably, the relief sought by Plaintiff in the present action is largely congruent as to all Defendants, namely, to resolve the purportedly incomplete subdivision of the Original Lots into the New Lot 37 and the New Lot 38. As a corollary, one may reasonably anticipate substantial overlap between the evidence to be considered by the court in determining whether, and to what extent, to grant Plaintiff the relief it seeks - whether on

a motion for a default judgment against the Non-Appearing Defendants, or on a motion for summary judgment, or at a trial, against the Co-Defendants. Rather than constraining Plaintiff to submit inter-related motions on two occasions - thereby requiring the court to determine two intertwined successive motions against different sets of Defendants - it would be sensible from a judicial economy standpoint, to resolve the Non-Appearing Defendants' default at this stage, while addressing the allegedly incomplete lot subdivision issue in the context of motion practice featuring all Defendants or at trial.

This path is all the more sound in that addressing the purportedly incomplete lot subdivision matter in the framework of a single motion featuring all Defendants, or at trial, would permit the court to be exposed to all parties' positions or evidence before rendering a determination. Further militating in favor of scheduling proceedings for the entry of a default judgment against the Non-Appearing Defendants simultaneously with summary judgment or trial, the core incomplete lot subdivision issue is unlikely to be ripe for disposition as this action is at a nascent stage from a procedural standpoint (*see Ramirez v Islandia Exec. Plaza, LLC*, 92 AD3d 747, 748 [2d Dept 2012] [Second Department held that "[w]hen dealing with multiple defendants, CPLR 3215 (d), upon application of a party, imbues the Supreme Court with the discretion to make an order permitting further proceedings against a defaulting party to occur when the matter is tried . . . without regard to the one-year time period otherwise imposed by CPLR 3215 (c) for taking proceedings for the entry of a judgment after a party's default"]; *Doe v Jasinski*, 195 AD3d 1399, 1402 [4th Dept 2021] [appellate court held that the purpose of CPLR 3215 (d) is to provide the

court with discretion to decide whether a determination against the defaulting defendant should await the disposition of the matter against the non-defaulting defendants]).

In light of the above, the branch of Plaintiff's motion (motion sequence number 5) in which Plaintiff seeks an order directing that further proceedings for the entry of a default judgment against the Non-Appearing Defendants be conducted at the time of summary judgment or trial is granted.

The Branch of Plaintiff's Motion in Which a Default Judgment Is Sought Is Denied as Plaintiff Failed to Establish the Viability of its Action

In its moving papers, Plaintiff seeks, as an alternative form of relief, the issuance of a default judgment at this juncture. For instance, Plaintiff characterizes its moving affirmation as one "in support of plaintiff's motion for a default judgment against defendants Winston Blake, Leslie E. Blake, Ken Griffith, Christina Griffith, Bhola Ramsundar, and Mortgage Electronic Registration Systems, Inc" (*see* NYSCEF Doc No. 140, Han affirm. at 1).

To prevail on the branch of its motion in which it seeks a default judgment, Plaintiff bears the burden to establish that it has a viable cause of action against the defaulting parties, to wit, the Non-Appearing Defendants (*see Charmon v Pavy*, 153 AD3d 493, 494 [2d Dept 2017] [Second Department held that "the plaintiff was not entitled to a default judgment because he failed to establish that he had a viable cause of action and, thus, the motion was properly denied"] [internal quotation marks omitted]; *Resnick v Lebovitz*, 28 AD3d 533, 534 [2d Dept 2006] [Second Department denied plaintiffs' motion for a default judgment on the basis that they failed to "support their motion for a default judgment . . .

with at least enough facts to enable the court to determine that a viable cause of action exists"] [internal quotation marks and brackets omitted]).

That Plaintiff failed to establish the viability of its cause of action against the Non-Appearing Defendants cannot be gainsaid as an analysis of Plaintiff's counsel's moving affirmation reveals it to be bereft of any articulation of a viable cause of action. To the contrary, Plaintiff's counsel in his moving affirmation alleges as follows in conclusory fashion as to the substance of Plaintiff's suit, which allegations fall short of forging the contours of a viable cause of action:

> On October 12, 2023, Plaintiff commenced the present action by filing a Summons and Verified Complaint . . . to address the incomplete subdivision of the Original Lots. Ramsundar, the developer and original owner of the Original Lots, intended to combine these three Original Lots and then subdivide them into two equal size lots, such that one lot would consist of Lot 37 and half of Lot 38 ("New Lot 37") and the other would be comprised of the remaining half of Lot 38 and Lot 39 ("New Lot 38"), and develop two single-family houses on each of New Lot 37 and New Lot 38. While Ramsundar completed the development and construction of the two single-family homes on New Lot 37 and New Lot 38, the intended subdivision of the Original Lots into New Lot 37 and New Lot 38 was never completed. Although the issue with the subdivision remained unresolved, Ramsundar thereafter sold each of the single-family homes to the Blakes and the Griffiths, respectively. Despite Plaintiff's efforts to address the error in the subdivision without seeking judicial intervention, both the Blakes and Griffiths have been uncooperative in addressing the incomplete subdivision, necessitating Plaintiff to commence the instant action.

(NYSCEF Doc No. 140, Han affirm. ¶ 140).

The amorphous allegations in counsel's moving affirmation as to the nature of the parties' dispute are particularly notable as Plaintiff eschews mention of the nexus, if any,

between Plaintiff and the Non-Appearing Defendants, all but vitiating the development of any viable cause of action (*see* NYSCEF Doc No. 140, Han affirm. ¶ 1-31).

In these circumstances, the branch of Plaintiff's motion in which it seeks a default judgment against the Non-Appearing Defendants is denied (motion sequence number 5) (*see Lugo v Corso*, 215 AD3d 944, 945 [2d Dept 2023] [Second Department held that "[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit . . . proof of the facts constituting its claim . . . To succeed on the motion, a plaintiff must allege enough facts to enable the court to determine that a viable cause of action exists . . . Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief"] [internal quotation marks omitted]; *Venturella-Ferretti v Ferretti*, 74 AD3d 792, 793 [2d Dept 2010] ["a plaintiff's right to recover upon a defendant's default in answering is governed by CPLR 3215 . . . which requires that the plaintiff state a viable cause of action . . . Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default"] [internal quotations marks omitted]; *Beaton v Transit Facility Corp.*, 14 AD3d 637, 637 [2d Dept 2005] [court held that, to obtain a default judgment, plaintiff is required to establish a viable cause of action, and, as such, denied the motion as plaintiff's motion "incorporated conclusory statements" which were insufficient to support a default judgment pursuant to CPLR 3215 (f)]).

However, based on applicable precedent in the default judgment context, the denial of the branch of Plaintiff's motion in which Plaintiff seeks a default judgment against the Non-Appearing Defendants is with leave to renew on proper papers (*see Matone v*

Sycamore Realty Corp., 31 AD3d 721, 722 [2d Dept 2006] [Second Department held that, notwithstanding the denial of plaintiffs' motion for a default judgment due to their failure to proffer evidence in conjunction with their motion establishing the viability of their claims, such denial was with leave to renew on proper papers]; *Blam v Netcher*, 17 AD3d 495, 496 [2d Dept 2005]).

Plaintiff's Default Judgment Motion Is Supported by Neither an Affidavit nor a Complaint Verified by a Person with Knowledge

Further warranting the denial of Plaintiff's default judgment motion, such motion is accompanied by neither an affidavit from a person with knowledge nor a complaint verified by a person with knowledge. Specifically, Plaintiff's motion is merely supported by (i) Plaintiff's counsel's affirmation, which evinces no personal knowledge of the parties' fact-specific dispute revolving inexorably around a central axis, to wit, the alleged incomplete subdivision of the Original Lots into the New Lot 37 and the New Lot 38 (*see* NYSCEF Doc No. 140, Han affirm. ¶ 13); and (ii) Plaintiff's Amended Complaint, which was likewise executed by Plaintiff's counsel, and was not verified by a person with knowledge (*see* NYSCEF Doc No. 72, Amended Complaint ¶¶ 1-136).

In light of the dearth of admissible evidence submitted in connection with Plaintiff's default judgment motion, the motion must be denied. Indeed, in circumstances where, as here, a movant's default judgment motion is predicated on an attorney affirmation coupled with a complaint not verified by a person with knowledge, such motion must be denied, with leave to renew on proper papers (*see Dess v LRM Bldrs., LLC*, 56 AD3d 716, 717 [2d Dept 2008] [appellate court denied plaintiffs' default judgment motion with leave to renew

on proper papers as "plaintiffs did not submit an affidavit of the facts, or a complaint verified by a party with personal knowledge"]; *Hosten v Oladapo*, 44 AD3d 1006, 1006 [2d Dept 2007] [Second Department denied plaintiff's motion for a default judgment "since he failed to submit an affidavit or a complaint verified by a party with personal knowledge of the facts constituting the claim"]).

Plaintiff's decision to support its default judgment motion with an attorney affirmation in lieu of an affidavit from a person with knowledge is all the more unavailing in that an affirmation from an attorney without personal knowledge is barren of evidentiary value (*see Amato v Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2d Dept 2004] [Second Department gave no weight to the "bare affirmation" submitted by plaintiff in connection with his motion]; *Sloan v Schoen*, 251 AD2d 319, 320 [2d Dept 1998] ["the bare affirmation of the plaintiff's attorney, who demonstrated no personal knowledge . . . was without evidentiary value"]).

Based on the above, the branch of Plaintiff's motion in which Plaintiff seeks a default judgment against the Non-Appearing Defendants is denied with leave to renew on proper papers (motion sequence number 5).

The Vagueness Permeating Plaintiff's Default Judgment Motion

A further independent basis exists warranting the denial of Plaintiff default judgment motion, namely, the vagueness coursing through the sinews of Plaintiff's motion. A review of Plaintiff's motion reveals that: (i) Plaintiff remains silent as to its role, if any, in the transactions that led to the parties' dispute, culminating in the filing of the lawsuit; (ii) Plaintiff steers clear of any reference to its line of business, rendering it onerous to

ascertain its linkage to the parties' conflict, and hence its entitlement to a default judgment; and (iii) Plaintiff sidesteps any mention of the cause(s) of action on which its motion is predicated (*see* NYSCEF Doc No. 140, Han affirm. ¶¶ 2-30).

Plaintiff's motion, engulfed in a nebulous shroud of haziness, cannot plausibly serve as a vehicle for a default judgment. Indeed, when, as here, a plaintiff's default judgment motion is unduly vague, New York courts have repeatedly denied the motion given the requirement that the movant establish the viability of its cause of action (*see 799 Crown St., LLC v Leblanc*, 203 AD3d 1117, 1118-1119 [2d Dept 2022]; *Roy v 81E98th KH Gym, LLC*, 142 AD3d 985, 985-986 [2d Dept 2016] [appellate court denied plaintiff's default judgment motion as a "plaintiff must allege enough facts to enable the court to determine that a viable cause of action exists," a requirement plaintiff did not satisfy as "plaintiff failed to allege enough facts in his affidavit to enable the court to determine that a viable cause of action exists"]; *Cardo v Board of Mgrs., Jefferson Vil. Condo 3*, 29 AD3d 930, 932 [2d Dept 2006]).[6]

[6] Having not appeared in the present action, the Non-Appearing Defendants did not oppose Plaintiff's motion, much less argue that Plaintiff's motion for a default judgment against them is unavailing as such motion fails to establish the viability of Plaintiff's claims. The Non-Appearing Defendants' silence on this matter does not foreclose the denial of Plaintiff's motion based on this line of argument. Indeed, in the default judgment context the court is vested with a gatekeeper function given the prevalence of unopposed motions in this setting, coupled with the desirability of adjudicating cases on the merits. As the Appellate Division, Second Department encapsulated this approach, underscoring that courts are not subject to an ineluctable duty to grant a default judgment motion, "it should be kept in mind that a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment" (*see Paulus v Christopher Vacirca, Inc.*, 128 AD3d 116, 126 [2d Dept 2015]; *see also McGee v Dunn*, 75 AD3d 624, 624 [2d Dept 2010]; *Resnick v Lehovitz*, 28 AD3d 533, 534 [2d Dept 2006] ["[t]hat [third-party defendant] Marko defaulted did not give rise to a mandatory ministerial duty to enter a default judgment against it"]).

Based on the foregoing, the branch of Plaintiff's motion in which Plaintiff seeks a default judgment against the Non-Appearing Defendants is denied with leave to renew on proper papers (motion sequence number 5).

Any arguments not expressly addressed herein were considered and deemed to be without merit. This constitutes the decision and order of the court.

ENTER

KW

A.J.S.C.

Hon. Kerry J. Ward, A.J.S.C.