Bowers v Estee Lauder, Inc.
2026 NY Slip Op 31765(U)
April 21, 2026
Supreme Court, New York County
Docket Number: Index No. 190005/2025
Judge: Eric Schumacher
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIC SCHUMACHER **PART** 13M

Justice

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POLLYANNA BOWERS,

Plaintiff,

- v -

ESTEE LAUDER, INC. et al.,

Defendants.

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INDEX NO. 190005/2025

MOTION DATE 04/21/2026

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

NYSCEF doc nos. 322-328 were read on this motion for an order directing the entry of a default judgment.

Motion by plaintiff pursuant to CPLR 3215(a) for an order directing the entry of a default judgment in favor of plaintiff and against defendant Yardley of London, Inc. s/h/a Yardley of London, Inc. f/k/a Lentheric Inc. and Lentheric Distributors Inc. on the first amended complaint denied without prejudice with leave to renew.

BACKGROUND

Plaintiff, Pollyanna Bowers, commenced this New York City Asbestos Litigation (NYCAL) personal injury action on January 8, 2025. Plaintiff alleges that her mesothelioma was caused due to exposure to asbestos from various defendant's products. On February 7, 2025, plaintiff filed an amended complaint verified by counsel that added Yardley of London, Inc. (Yardley), a Delaware corporation, as a defendant in the action. On February 12, 2025, plaintiff pursuant to Business Corporation Law § 306 served a copy of the amended complaint on Yardley through service on an agent authorized by the Secretary of State of New York to accept such service (affirmation in support, exhibit 2). On February 4, 2026, plaintiff served an additional notice of the amended complaint (affirmation in support, exhibit 3). To date, Yardley has failed to answer or otherwise respond in this action. On February 19, 2026, plaintiff moved pursuant to CPLR 3215 for an order directing the entry of a default judgment in favor of plaintiff and against Yardley on the first amended complaint.

In support of the motion, among other things, plaintiff relies on her unsigned deposition transcript volumes. Plaintiff identified using Yardley's talcum products between the ages of 12-14 and described how she used them (affirmation in support, exhibit 4, plaintiff's deposition tr at 62, 607, and 608). While the transcript is unsigned by plaintiff, it was certified as accurate by the shorthand reporters and notary public who swore the plaintiff in for her testimony (id. at 83 and 620). Further, the parties stipulated that CPLR 3116 applied for purposes of reviewing and signing the transcript. Plaintiff also relies on an uncertified report by Prof. Seymour Lewin from 1972 where he analyzed various off-the-shelf talcum products, including two Yardley talcum products in which he found 3% tremolite asbestos fibers (affirmation in support, exhibit 5). Plaintiff now seeks a default judgment against Yardley.

DISCUSSION

A motion for a default judgment must be supported with "proof of service of the summons and the complaint[,] . . . proof of the facts constituting the claim, the default and the amount due" (CPLR 3215 [f]). The plaintiff must offer "some proof of liability . . . to satisfy the court as to the prima facie validity of the uncontested cause of action" (Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (id.). This can be done "by submission of an affidavit of merit or by verified complaint, if one has been properly served" (Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations, 217 AD3d 553, 554 [1st Dept 2023]).

Plaintiff has supported this application with proof of service on Yardley, and proof of its default. Service upon Yardley, a foreign business corporation, was complete when the Secretary of State was served pursuant to Business Corporation Law § 306 (see Fisher v Lewis Constr. NYC Inc., 179 AD3d 407, 408 [1st Dept 2020]). Yardley has failed to answer or otherwise respond within the time prescribed (see CPLR 320[a] and 3012[c]). Plaintiff also complied with the additional notice requirement pursuant to CPLR 3215(g)(4) by mailing a copy of the summons by first class mail to Yardley at its last known address at least twenty days before the entry of judgment. Further, CPLR 3215 (g)(4)(ii) specifies that the "failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment." Plaintiff moved for an entry of the default judgment within one year of the default (see CPLR 3215[c]). As such, plaintiff has moved timely and has supported this application with proof of service on Yardley, as well as proof of its default.

As to the facts constituting the claim, plaintiff has relied on the amended complaint, a report by Prof. Lewin submitted through counsel affirmation, and plaintiff's unsigned deposition volumes. Plaintiff's reliance on the amended complaint verified by counsel as well as on the uncertified report by Prof. Lewin submitted through counsel's affirmation is insufficient. It is well-settled Appellate Division, First Department precedent that where, as here, a plaintiff's attorney lacks personal knowledge, "a complaint verified by counsel is purely hearsay, devoid of evidentiary value, and thus insufficient to support entry of a default judgment pursuant to CPLR 3215" (Beltre v Babu, 32 AD3d 722, 723 [1st Dept 2006], citing Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994] and Joosten v Gale, 129 AD2d 531, 534-535 [1st Dept 1987]). Moreover, "[w]hile an affirmation of counsel may serve as the vehicle for the submission of acceptable attachments which provide evidentiary proof in admissible form, such an affirmation is not a vehicle to admit inadmissible hearsay such as uncertified reports. . . ." (Brodie v Bd. of Mgrs. of the Aldyn, 226 AD3d 555, 556 [1st Dept 2024] [internal quotation marks omitted], citing Zuckerman v City of New York, 49 NY2d 557, 563 [1980]). Here, Prof. Lewin's report is uncertified, and only offered through counsel's affirmation. Under the circumstances, Prof. Lewin's report is inadmissible hearsay and is insufficient to support entry of a default judgment.

Plaintiff, however, can rely on her unsigned deposition volumes to prove the facts constituting her claim. A "deposition transcript is an adequate substitution for an affidavit of merits" (Zabari v City of NY, 242 AD2d 15, 17 [1st Dept 1998]). Further, "CPLR 3116[a]

allows a deposition transcript to be admitted as though it were signed especially where . . . the transcript [is] certified as accurate" (id. at 17 [internal citations omitted]). A party adopts their unsigned transcript as accurate by submitting it in support of their motion (see Ying Choy Chong v 457 W. 22nd St. Tenants Corp., 144 AD3d 591, 591-92 [1st Dept 2016]; Franco v Rolling Frito-Lay Sales, Ltd., 103 AD3d 543, 543 [1st Dept 2013]). Here, plaintiff's deposition has been certified as accurate by the shorthand reporters and notary public who reported plaintiff's testimony. Further, plaintiff, by submitting the unsigned deposition in support of her motion, adopted its accuracy. Under the circumstances, plaintiff's deposition transcript is an adequate substitution for an affidavit of merit in support of this motion.

Upon review of the evidence, however, the court finds that plaintiff has failed to provide sufficient proof of the facts constituting the claim. Plaintiff's action against Yardley is premised on the allegation that plaintiff's use of Yardley's talcum products exposed her to asbestos which caused her mesothelioma. In default proceedings, there are certain types of claims that require expert opinions to demonstrate merit as they are beyond a layman's ordinary experience and knowledge (see Fiore v Galang, 64 NY2d 999, 1001 [1985]; see also Williams v D'Angelo, 24 AD3d 538, 539 [2d Dept 2005] [where the appellate court affirmed the motion court's denial to restore a medical malpractice case to the trial calendar based on the finding that, among other things, the plaintiffs failed to demonstrate through an expert affidavit that they have a meritorious cause of action]). However, a movant is "not required to prove its entitlement to judgment as a matter of law; it [is] required only to present sufficient nonhearsay facts to demonstrate the existence of a viable cause of action" (State of NY v Williams, 73 AD3d 1401, 1403 [3d Dept 2010]; Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 [2003]).

Here, plaintiff, a layperson, has merely identified exposure to Yardley's talcum products between the ages of 12-14. There remains an absence of sufficient admissible facts to demonstrate the viability of plaintiff's claim that such use of Yardley's products exposed plaintiff to asbestos which caused her mesothelioma. Prof. Lewin's report is inadmissible. Even if it were admissible, the report is limited to asbestos content in talcum products. It does not shed light on asbestos exposure causing plaintiff's mesothelioma. Under the circumstances, the court finds that plaintiff has failed to provide sufficient proof of the facts constituting her claim. As such, plaintiff's motion is denied without prejudice with leave to renew.

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CONCLUSION

Accordingly, it is

ORDERED that plaintiff's motion pursuant to CPLR 3215(a) for an order directing the entry of a default judgment in favor of plaintiff and against defendant Yardley of London, Inc. s/h/a Yardley of London, Inc. f/k/a Lentheric Inc. and Lentheric Distributors Inc. on the first amended complaint is denied without prejudice; and it is further

ORDERED that plaintiff is granted leave to renew this motion, with additional proof of the facts constituting the claim, to be filed no later than the deadline for all dispositive motions in this case; and it is further

ORDERED that if plaintiff fails to renew this motion by such deadline, the motion is denied with prejudice; and it is further

ORDERED that within five days of entry, defendant Yardley of London, Inc. s/h/a Yardley of London, Inc. f/k/a Lentheric Inc. and Lentheric Distributors Inc. shall serve a copy of this order with notice of entry on plaintiff.

The foregoing constitutes the decision and order of this court.

4/21/2026
DATE

ERIC SCHUMACHER, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

190005/2025 BOWERS v ESTEE LAUDER, INC. et al.
Motion No. 006