

Avamer 57 Fee LLC v Enn Kong Liew

2026 NY Slip Op 31879(U)

April 29, 2026

Supreme Court, New York County

Docket Number: Index No. 651396/2025

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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AVAMER 57 FEE LLC

Plaintiff,

- v -

ENN KONG LIEW,

Defendant.

INDEX NO. 651396/2025

MOTION DATE 09/02/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - DEFAULT.
APPEARANCES:

Braunhagey & Borden LLP, New York, NY (Jeremy Cohen, Esq.),
for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action to recover unpaid rent plus interest,
plaintiff AVAMER 57 FEE LLC (plaintiff) moves, pursuant to CPLR
§ 3215, for an order granting it leave to enter a default
judgment against defendant ENN KONG LIEW, D.M.D (defendant) in
the amount of \$97,082.95, and attorneys' fees in the amount of
\$33,731.13.

Defendant did not appear or submit opposition to the
motion (sequence number 01).

When a defendant fails "to appear, plead or proceed to
trial of an action reached and called for trial, or when the

court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (see CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

Plaintiff is not entitled to a default judgment because it fails to submit an affidavit of non-military service for defendant. In addition to providing proof of service of the summons and complaint and the facts constituting the claim (see generally CPLR § 3215; see also Bigio v Gooding, 213 AD3d 480, 481 [1st Dept 2023]), a plaintiff moving for a default judgment must tender proof of a defendant's non-military status before a judgment may be entered (see Unitrin Advantage Ins. Co. v 21st Century Pharm., 158 AD3d 450, 451 [1st Dept 2018]). Specifically, pursuant to the Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act, a party seeking a default

judgment against an individual defendant must submit proof that said defendant was not in military service at the time of the default (see 50 USC § 3931 [b][1] [emphasis added]; see also Military Law § 309 [1]).

"A proper affidavit of nonmilitary service should include the date and location of the investigation and the facts gleaned from the investigation" (Benabi Realty Mgt. Co. v Van Doorne, 190 Misc2d 37, 38 [Sup Ct NY Cnty 2001]). Documentation provided directly from the Department of Defense Manpower Data Center -- "the official source of data on eligibility for military" -- is sufficient to enable the court to conclude that a defendant is not currently on active military duty, or was at the time of the default (363 Assoc. v Sharhan, 2 Misc3d 928, 930 [Civ Ct NY Cnty 2003]).

Accordingly, it is hereby

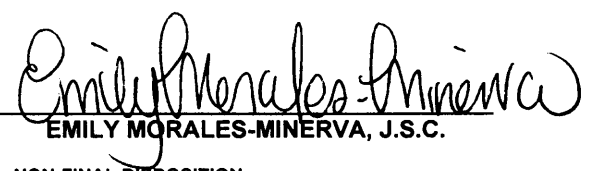
ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

ORDERED that, within fifteen days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon defendant; it is further

ORDERED that plaintiff shall bring a renewed default judgment motion within 90 days from the date of this decision and order; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

4/29/2026
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE