

Motor Veh. Acc. Indem. Corp. v Velasco

2026 NY Slip Op 31979(U)

May 7, 2026

Supreme Court, New York County

Docket Number: Index No. 451885/2024

Judge: Emily Morales-Minerva

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

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MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION

Plaintiff,

- v -

MACKENZIE M. VELASCO,

Defendant.

INDEX NO. 451885/2024

MOTION DATE 11/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

Marylou Paolucci & Associates PC, Smithtown, NY (Marylou Anne Paolucci, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION (plaintiff) moves, pursuant to CPLR § 3215, for an order granting it leave to enter a default judgment against MACKENZIE M. VELASCO (defendant) in the amount of \$ 50,000.00, together with interest from January 21, 2022.

Defendant does 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]).

Further, the Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act requires a party seeking a default judgment against an individual defendant to 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 respondent 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]).

Here, plaintiff does not demonstrate its entitlement to entry of a default judgment against defendant. First, plaintiff fails to submit an affidavit of non-military service for defendant. Further, CPLR § 308 (4) provides that "where service of process cannot be made with due diligence by personal delivery (CPLR § 308 [1]) or by the delivery and mail alternative (308 § [2]), service can be affected [] by affixing the summons to the door of . . . the actual . . . dwelling place or usual place of abode . . . of the person to be served and by . . . mailing the summons to such person at his or her last known address" (Spath v Zack, 36 AD3d 410, 411 [1st Dept 2007], quoting CPLR § 308 (4) [internal quotation marks omitted, emphasis added]). The affirmation of service reflects that plaintiff's process server made only two attempts at service before affixing the summons and complaint to plaintiff's door (see NYSCEF Doc. No. 03, affirmation of service). This is insufficient to satisfy the due diligence requirement.

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 defendants; 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.

5/7/2026
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"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE