

Motor Veh. Accident Indem. Corp. v Reyes
2026 NY Slip Op 32004(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 452873/2024
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 -

MIOSOT REYES, SAUVEUR PROSPER

Defendants.

INDEX NO. 452873/2024

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) 9, 10, 11, 12, 13, 14, 15, 16, 17

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 MIOSOT REYES and SAUVEUR PROSPER SR. (defendants) in the amount of \$ 29,499.00, together with interest from January 31, 2022.

Defendants do 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 fails to submit an affidavit of non-military service for either defendant. Therefore, the motion (seq. no. 01) is denied.

Notwithstanding this defect, the motion is also denied inasmuch as plaintiff's proof does not establish a prima facie case as to any of the causes of action alleged in the complaint. Rather, plaintiff submits the affidavit of Jason Dooley, president of plaintiff, who attests, conclusorily and without any supporting documentation, that "[plaintiff] caused an investigation to be made . . . [and] during the course of [plaintiff's] investigation, it was determined that defendants are liable to [plaintiff]" (NYSCEF Doc. No. 11, affidavit of Jason Dooley, president of plaintiff, dated October 30, 2024).

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
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE