

Davis v Opensponsorship Corp
2026 NY Slip Op 32010(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 659193/2025
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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VERNON DAVIS,

Plaintiff,

- v -

OPENSponsorSHIP CORP., CALLONDOC.COM

Defendants.

INDEX NO. 659193/2025

MOTION DATE 03/02/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10
were read on this motion to/for JUDGMENT - DEFAULT

EMILY MORALES-MINERVA, J.S.C.

In this action for breach of contract, plaintiff VERNON DAVIS (plaintiff) moves, pursuant to CPLR § 3215, for an order granting it leave to enter a default judgment against defendant OPENSponsorSHIP CORP. (defendant) in the amount of \$22,500.00.¹

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

¹ Plaintiff does not move for an order granting it leave to enter a default judgment against defendant CALLONDOC.COM.

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]).

Similarly, where a default judgment is sought, as here, against a corporation, the proponent must also submit proof that either -- simultaneous with service, pursuant to BCL § 306, or after such service -- they executed "additional service of the summons [on the corporation] by first class mail" at the corporation's "last known address" (CPLR § 3215 [g] [4] [i] [emphasis added]; BCL § 306 [b] [2]).

While plaintiff appropriately served defendant by effectuating service upon the secretary of state (NYSCEF Doc. No. 03, affirmation of service), plaintiff provides insufficient proof of compliance with the additional mailing requirement of CPLR § 3215 (g) (4) (ii). It appears that plaintiff executed additional service of the summons by mailing it to the secretary of state, which is insufficient (see id.).

Further, "CPLR § 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown [] Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (Welz v Brown, 228 AD3d 416, 418 [1st Dept 2024]; Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]). While the standard of proof necessary to support an application for a default judgment is not stringent, some firsthand confirmation of the facts forming the basis of the claim is necessary (see Feffer v Malpeso, 210 AD2d 60, 61 [1st Dept 1994]; see also Resnick v Lebovitz, 28 AD3d 533 [2d Dept 2006]). "[A] complaint verified by counsel amounts to no more than an attorney's affidavit, and is insufficient to support entry of default judgment" (Feffer, 210 AD2d at 61; see also Gaviola v City of New York, 234 AD3d 525 [1st Dept 2025]).

Notwithstanding the defect addressed above, plaintiff submits neither a complaint verified by plaintiff nor an affidavit of a person with personal knowledge of the facts constituting the claims. The affidavit of Jean-Marc Zimmerman, counsel of record, and the complaint "verified" by the same counsel are insufficient to satisfy this requirement (Guzetti v City of New York, 32 AD3d 234, 236 [1st Dept 2006]; see also William v N. Shore LIJ Health Sys., 119 AD3d 937 [2nd Dept

2014] [plaintiff failed to proffer affidavit of the facts by a party with personal knowledge as required by CPLR § 3215 (f)]).

Additionally, to prevail on his breach of contract claim, plaintiff must establish that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their contractual obligations; and that (4) defendants breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51 [2022] [emphasis added]). This standard requires the plaintiff to demonstrate "the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated" (Hempel v Wise, 224 AD3d 574, 575 [1st Dept 2024], quoting Matter of Sud v Sud, 211 AD2d 423, 424 [1st Dept 1995]).

Plaintiff submits no contract between him and defendant, and submits no supporting facts from which the court could determine the terms of a contract, if any (see NYSCEF Doc. No. 01, complaint [providing that, on information and belief, the source of such information unidentified, "plaintiff agreed to provide promotional services to [non-party Better Mortgage] in exchange for \$10,000" and "defendant was responsible for remitting payment [on behalf of non-party Better Mortgage] to plaintiff"]).

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.

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 type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE