

Obtaining a Default Judgment in New York State Court

by Suzanne M. Berger, Bryan Cave Leighton Paisner LLP, with Practical Law Litigation

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A Practice Note outlining procedures to obtain a default judgment in New York State Court under Civil Practice Law and Rules (CPLR) 3215. This Note discusses a litigant's path to obtain a default judgment, as well as the ways to oppose a default judgment motion and related appellate issues. These procedures also apply to the New York City Civil Court, to the Nassau and Suffolk County District Courts, and to the City Courts outside of New York City (CPLR 101).

When a plaintiff properly commences an action, the defendant must appear in a manner recognized by practice rules. If the defendant fails to do so, the plaintiff can seek a default judgment against the defendant. In addition, when a party fails to prosecute or defend its case, the opposing party can seek a default judgment. This Note outlines when and how a party may seek a default judgment. This Note refers to plaintiffs and defendants, but it also applies to petitioners and respondents in a special proceeding.

Applicable Rules

CPLR 3215 governs default judgments.

Counsel seeking a default judgment also should be familiar with:

- CPLR 2004, governing extensions of time generally.
- CPLR 2005, governing the court's ability to excuse delay or default due to law office failure.
- CPLR 3012(d), governing extensions of time to appear or plead.
- 22 New York Codes, Rules and Regulations (NYCRR) § 202.21(a), requiring the filing of a note of issue and certificate of readiness for an inquest.
- 22 NYCRR § 202.27, relating to defaults during litigation.
- 22 NYCRR §§ 202.27-a and 202.27-b, relating to the proof needed to obtain a default judgment in a consumer credit matter.

- 22 NYCRR § 202.46, relating to inquests to determine damages after a default.
- NY CCA § 1402 and 22 NYCRR §§ 208.14, 208.14-a, and 208.32, relating to the New York City Civil Court.
- NY UCCA § 1402 and 22 NYCRR §§ 210.14, 210.14-a, 210.14-b, and 210.32, relating to City Courts outside of New York City.
- NY UDCA § 1402 and 22 NYCRR §§ 212.14, 212.14-a, 212.14-b, and 212.32, relating the District Courts.

Counsel seeking a default judgment also should be familiar with subject matter specific statutes, such as Real Property Actions and Proceedings Law § 1321 (relating to defaults in mortgage foreclosure actions).

Grounds for a Default Judgment

CPLR 3215 sets out the several bases on which a party may seek a default judgment.

The most common ground for a default judgment is that the defendant failed to appear in that action.

Less frequently, certain defaults in prosecuting or defending the action during the course of the litigation can be the basis for a default judgment motion (see Defendant's Default During the Litigation and Plaintiff's Default During the Litigation).

Defaulting on obligations under certain settlement agreements that expressly provide that judgment may be entered without further notice in a specified amount also



can be the basis for a default judgment (see Any Party's Default on a Settlement Agreement).

Defendant's Default for Failure to Appear

When a plaintiff properly serves a defendant with a summons, the defendant must appear in the action or the defendant will be in default. The manner of appearance is governed by statute. A defendant appears by serving a notice of appearance, an answer, or a motion that has the effect of extending the time to answer (typically a pre-answer motion to dismiss). The defendant must appear within either 20 or 30 days after service is complete, depending on the type of service (CPLR 320(a) and 3012). Extensions of this time period may be obtained by consent of the opposing party or from the court (CPLR 3012(d)). If a defendant defaults by failing to appear, the plaintiff can seek a default judgment (CPLR 3215(a)).

Depending on the nature of the claim and the type of damages sought, a plaintiff can apply for a default judgment before either:

- The clerk (see Plaintiff's Application Before the Clerk).
- The judge (see Plaintiff's Motion Before the Court).

(CPLR 3215(a).)

Whether before the clerk or the court, a default judgment shall not exceed the amount or differ in type from the relief demanded in the complaint or notice served with a summons (CPLR 3215(b)).

For more information on responding to a summons and complaint, see [Practice Note, Responsive Pleadings in New York State Supreme Court: Answering the Complaint: Time to Answer the Complaint and Answering When the Summons Is Served Without the Complaint](#).

Plaintiff's Application Before the Clerk

A plaintiff can seek before the clerk a default judgment based on the initial non-appearance of the defendant in cases where both:

- The plaintiff makes the application within one year of the defendant's default.
- The claim is for either:
 - a sum certain; or
 - a sum that can be made certain by computation.

(CPLR 3215(a).)

Counsel generally prefer, where possible, to seek a default judgment before the clerk. It is quicker and involves only the submission of the appropriate papers. No hearing is required.

Sum Certain

A claim for a sum certain typically is a claim for non-payment under a contract or lease, an account stated claim, or a claim for liquidated damages where there is no dispute about the calculation of the amount sought. (See *Stephan B. Gleich & Assocs. v. Gritsipis*, 927 N.Y.S.2d 349, 355 (2d Dep't 2011) (account stated); *Time Warner City Cable v. Tri State Auto, Inc.*, 772 N.Y.S.2d 512, 512 (1st Dep't 2004) (contract cause of action).) In other words, it is the type of claim where the plaintiff does not need extrinsic proof to calculate the amount of damages (*Reynolds Sec., Inc. v. Underwriters Bank & Tr. Co.*, 406 N.Y.S.2d 743, 746 (1978)).

The clerk has authority to enter a judgment only in cases where all of the claims in the pleading are for a sum certain. If some are not, then counsel must make the application to enter the default judgment to the court. (*Stephan B. Gleich & Assocs.*, 927 N.Y.S.2d at 355-56.)

Where an action combines claims for a sum certain with other claims, and the default is based on the defendant's failure to appear or plead, the plaintiff can seek a clerk's judgment by first voluntarily discontinuing the other claims and leaving only the claim for a sum certain (*Stephan B. Gleich & Assocs.*, 927 N.Y.S.2d at 357-58). This is possible because a plaintiff generally can discontinue a claim voluntarily, without leave of court, at any time before the defendant serves a responsive pleading (CPLR 3217(a)(1)).

Counsel can make the application to the clerk even in a case where there are multiple defendants and only one defendant defaults. The clerk can enter judgment against the defaulting defendant and upon request sever the claims against the other non-defaulting defendants. (CPLR 3215(a).)

In an action with more than one defendant, where the defendants are only jointly liable and not severally liable, such as joint obligors on a note, a plaintiff should take care if seeking a judgment against only one defendant and have the clerk enter an order severing the action as to the other defendants (CPLR 3215(a)). If only one defendant defaults and the plaintiff intentionally enters judgment against only that defaulting defendant, the claims against the remaining jointly liable defendants end because those claims merge with the judgment. (See *United States*

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Printing & Lithograph Co. v. Powers, 135 N.E. 225, 228-29 (N.Y. 1922).)

Even after the defendant has appeared and asserted a counterclaim but not denied the plaintiff's claim, a plaintiff can request that the clerk enter judgment on the excess of the plaintiff's claim over the defendant's counterclaim when:

- The action is a contract action for the sum of money.
- The plaintiff files with the Clerk an admission of the defendant's counterclaim.

(CPLR 3215(h).)

Procedure

The plaintiff must submit to the clerk the necessary papers and the clerk enters judgment in the amount demanded in the complaint or summons with notice with costs and interest calculated by the clerk. (CPLR 3215(a); see Plaintiff's Application Before the Clerk: Necessary Papers.)

When to Move

The plaintiff must seek a clerk's default within one year of the default (CPLR 3215(a)). If the plaintiff fails to apply for a default judgment within one year of the default, the court can *sua sponte* or on motion dismiss the complaint as abandoned (CPLR 3215(c); see Waiver). The plaintiff need not obtain the default judgment within one year; it only must start proceedings to do so (*Wells Fargo Bank, N.A. v. Mayen*, 64 N.Y.S.3d 291, 293 (2d Dep't 2017); *CitiMortgage, Inc. v. Lottridge*, 40 N.Y.S.3d 573, 574-75 (3d Dep't 2016)).

To request a default judgment more than one year after the default, the plaintiff must make a motion before the court and show "sufficient cause" not to dismiss the action (see Plaintiff's Motion Before the Court).

The one year deadline applies even in an action with more than one defendant where some, but not all, defendants default; the plaintiff still must seek the default judgment within one year of the default. (See Sum Certain.)

A party cannot obtain a default judgment against an infant or incompetent until 20 days after the appointment of a guardian ad litem (CPLR 1203).

Where to Move

A plaintiff must make an application for a default judgment before the clerk in the county where the action is venued. Counsel should review the court's website and

local rules or contact the clerk of the court to confirm where the papers should be filed in paper-filed cases. In some counties, the papers should be submitted to the judgment clerk (see, for example, [New York County, County Clerk, County Clerk Functions and Offices, Litigation-Related Functions, B. Judgments, 2\) In Civil Actions: Judgments on Default](#)).

In e-filed cases, counsel should select from the drop-down document menu "Clerk Default Judgment (Proposed)" and upload the applicable papers. The submission is routed automatically to the county's judgment clerk.

Necessary Papers

For a plaintiff's application for a clerk's entry of default, the plaintiff must file:

- A proposed judgment (see Proposed Judgment).
- A copy of the summons and complaint, or the summons with notice, with the clerk's filing stamp.
- Proof of:
 - service of process on the defaulting defendant (see Proof of Service of Process);
 - the facts constituting the claim (see Proof of the Facts and the Amount Due);
 - the sum certain (see Proof of the Facts and the Amount Due);
 - the default (see Proof of the Default); and
 - additional mailing, if required (see Proof of Notice of the Application).
- An affidavit of non-military status, also called the military affidavit (see Affidavit of Non-Military Status).
- Either:
 - a bill of costs, if the plaintiff seeks costs, disbursements, or expenses (CPLR 8401, 8402, and 8403; for more information on the bill of costs, see [Practice Note, Preparing a Judgment in New York State Supreme Court: Bill of Costs](#)); or
 - an affirmation of counsel waiving costs.
- A judgment-roll, if not prepared by the clerk (CPLR 5017(b)); for more information on the judgment-roll, see [Practice Note, Preparing a Judgment in New York State Supreme Court: The Judgment-Roll](#).
- Other additional papers, if required (see Other Papers).

(CPLR 3215(f); see *Stephan B. Gleich & Assocs.*, 927 N.Y.S.2d at 352.)

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A Request for Judicial Intervention (RJI) is not required for an application for a clerk's default (22 NYCRR § 202.6(a)).

Invalid Clerk's Judgment

If the clerk improperly issues a default judgment, the judgment is a nullity. The clerk does not have authority to enter a judgment where, for example, the claim is not for a sum certain or the action involves claims for both a sum certain and other claims. In that instance, the defendant can move to vacate the improper clerk's judgment without demonstrating either a reasonable excuse for its default or a potentially meritorious defense, the factors normally required to oppose or vacate a default (*Barnett v. Diamond Fin. Co., Inc.*, 2020 WL 6153629, at *1-*2 (2d Dep't Oct. 21, 2020); see also *Opposing a Motion for a Default Judgment*). However, the better practice would be to move in the alternative for relief under both bases and to include the facts showing a reasonable excuse for default and the meritorious defense in the event the court disagrees that the judgment is invalid. (*Stephan B. Gleich & Assocs.*, 927 N.Y.S.2d at 349, 353, 355-56 (2d Dep't 2011).)

Also, by demonstrating a reasonable excuse for the default and a potentially meritorious defense, the court can address the underlying default and not just the clerk's judgment. If the court finds that the defendant's default is excusable, then the court vacates the entire judgment and the action reverts to its pre-default status. However, where the defendant fails to demonstrate a reasonable excuse for the default and a potentially meritorious defense, the court has no basis to vacate the underlying default, which concedes liability. In that instance, the court would be limited to vacating the judgment and setting down the case for an inquest on damages. (CPLR 5015(a)(1); *Stephan B. Gleich & Assocs.*, 927 N.Y.S.2d at 356-57.)

Unless a rule provides otherwise, a motion to vacate an invalid clerk's judgment should be made in the county where the action is venued (CPLR 3215(e)).

For more information on vacating a judgment, see [Practice Note, Motion to Vacate an Order or Judgment Entered on Default in New York State Supreme Court](#).

Plaintiff's Motion Before the Court

If the case is not entirely for a sum certain or if more than one year has elapsed since the default, the plaintiff must apply to the court for leave to enter a default judgment (CPLR 3215(a)).

Procedure

A motion for leave to enter a default judgment is directed to the court's discretion. The court can deny the motion even if

the plaintiff satisfies the basic statutory requirements for a default. (*Peg Bandwidth, LLC v. Opt. Commc'ns*, 56 N.Y.S.3d 66, 66-67 (1st Dep't 2017); see also *Schimoler v. Newman*, 107 N.Y.S.3d 111, 113-14 (2d Dep't 2019).) The court weighs the application against New York's public policy to resolve cases on the merits (*Yongjie Xu v. JJW Enters., Inc.*, 53 N.Y.S.3d 660, 661 (2d Dep't 2017); *US Bank Nat. Ass'n v. Richards*, 65 N.Y.S.3d 178, 180 (1st Dep't 2017)). For information on the factors that the court considers, see *Opposing a Motion for a Default Judgment*.

A defendant who defaults concedes only liability, but unless a sum certain is sought in the complaint, that defendant does not concede damages (*Rokina Optical Co., Inc. v. Camera King, Inc.*, 480 N.Y.S.2d 197, 198-99 (1984)). Therefore, unlike an application to the clerk, in a motion to the court, the court must determine damages by either:

- Conducting an inquest:
 - with a jury; or
 - without a jury.
- Appointing a referee (directing a reference) to issue a report determining damages and directing that:
 - the referee return the report to the court for further action; or
 - the clerk enter judgment according to the report, without any further application.

(CPLR 3215(b).)

The motion for a default judgment cannot exceed the amount or differ in the type of relief demanded in the complaint or summons with notice (CPLR 3215(b)).

The defendant can appear at the inquest and offer testimony and evidence and cross-examine the plaintiff's witnesses (*Reynolds Sec., Inc.*, 406 N.Y.S.2d at 746; *Dejesus v. H.E. Broadway, Inc.*, 106 N.Y.S.3d 878, 879 (2d Dep't 2019)).

If the court grants the motion, it generally orders either an inquest or directs a reference to determine damages.

The court may set the date for an inquest when it grants the order finding the default, although ordinarily, the court simply directs the plaintiff to serve and file a note of issue and certificate of readiness. The service and filing of a note of issue and certificate of readiness are required for an inquest (22 NYCRR § 202.21(a); see *JNG Constr., Ltd. v. Roussopoulos*, 96 N.Y.S.3d 655, 659 (2d Dep't 2019) (ordering an inquest following the filing of a note of issue); *Minicozzi v. Gerbino*, 754 N.Y.S.2d 25, 26 (2d Dep't 2003) (noting that the plaintiff filed a note of issue to place the case on the inquest calendar)).

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If the plaintiff's claims are legal claims and not equitable ones, and plaintiff wants a jury, it must include a demand for a jury in the note of issue and pay the appropriate fee (CPLR 4102; 22 NYCRR § 202.21(c)). By defaulting, the defendant presumably waives any right to demand a trial by jury if plaintiff seeks a non-jury trial (Practice Commentary C3215:7 to McKinney's CPLR 3215).

A plaintiff may conduct discovery on the issue of damages, but a defaulting defendant forfeits any right to do so (*Reynolds Sec., Inc.*, 406 N.Y.S.2d at 746; *Law Firm of Ravi Batra, P.C. v. Rabinowich*, 909 N.Y.S.2d 706, 708 (1st Dep't 2010); *Minicozzi*, 754 N.Y.S.2d at 27). The defendant can issue subpoenas to obtain evidence for use at the inquest (*Singh v. Friedson*, 829 N.Y.S.2d 552, 553 (2d Dep't 2007) (distinguishing between pretrial discovery and marshaling evidence for trial)).

At the inquest, the plaintiff bears the burden of proving a *prima facie* case regarding damages (*Oparaji v. 245-02 Merrick Blvd, LLC*, 54 N.Y.S.3d 408, 409 (2d Dep't 2017)). The plaintiff can prove damages by calling live witnesses or submitting affidavits. If the defendant gives notice that it will appear at the inquest, the plaintiff must make available for cross-examination any witnesses that submitted affidavits. (CPLR 3215(b); 22 NYCRR § 202.46(a).)

When to Move

A plaintiff must move for leave to enter a default judgment within one year of the defendant's default in appearance absent good cause for delay in seeking that relief (CPLR 3215(c)). (See Plaintiff's Application Before the Clerk: When to Move.)

If the plaintiff fails to move for a default judgment within one year of the default, the court can dismiss the complaint as abandoned, either on motion or sua sponte (CPLR 3215(c); see Waiver).

The one-year rule applies even in actions with more than one defendant, and some, but not all, defendants default, the plaintiff still must move for a default judgment within one year of the default. The court can order that proceedings for the entry of judgment or to determine damages of the defaulting defendants be held in abeyance and determined at the time of or after the trial of the remaining non-defaulting defendants. The court can do this by *ex parte* order. The plaintiff must serve the order on the defaulting defendants in the manner directed by the court (CPLR 3215(d).) The plaintiff also should serve the non-defaulting defendants with the order (CPLR 2103(e)).

If a third-party defendant defaults, the defendant/third-party plaintiff can obtain a default judgment. Where the third-party claim is contingent on the defendant's liability in the main action, such as claims for contribution or indemnification, the one-year time period within which to take a default under CPLR 3215(c) does not begin to run until the court enters judgment against the defendant in the main action (*Multari v. Glalin Arms Corp.*, 282 N.Y.S.2d 782, 784 (2d Dep't 1967); see also *IMP Plumbing & Heating Corp. v. 317 E. 34th St., LLC*, 933 N.Y.S.2d 252, 253 (1st Dep't 2011)). However, a safer practice would be to move within one year of the default for an interlocutory default judgment on the issue of liability, and request an inquest on damages to be conducted at the same time as the trial of the main action (see *Lamar-Robinson v. New Birth, Inc.*, 726 N.Y.S.2d 461, 462 (2d Dep't 2001)). For more information on third-party practice, see [Practice Note, Third-Party Practice in New York State Supreme Court](#).

As with a default judgment taken by the clerk, a party cannot obtain a default judgment against an infant or incompetent until 20 days after the appointment of a guardian ad litem (CPLR 1203).

Where to Move

Unless a rule provides otherwise, a motion for a default judgment should be made in the county where the action is venued (CPLR 3215(e)).

Necessary Papers

A plaintiff's motion for leave to enter a default judgment must include:

- An RJ, if a judge has not been assigned to the case.
- If the application is **not** *ex parte* (see Proof of Notice of the Application), either:
 - an order to show cause; or
 - a notice of motion.
- A copy of the summons and complaint, or the summons with notice, with the clerk's filing stamp.
- Proof of:
 - service of process on the defaulting defendant, with the clerk's filing stamp (see Proof of Service of Process);
 - the facts constituting the claim (see Proof of the Facts and the Amount Due);
 - the amount due, if it is a claim for money (see Proof of the Facts and the Amount Due);

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- the default (see Proof of the Default); and
- additional mailing, if required (see Proof of Notice of the Application).
- An affidavit of non-military status, or the military affidavit (see Affidavit of Non-Military Status).
- Other additional papers, if required (see Other Papers).

(CPLR 3215(f); *Wells Fargo Bank, N.A.*, 64 N.Y.S.3d at 294; see also [New York County, Case Processing, Motions & Applications, Ex Parte Applications, C. Other Ex Parte Applications & Related Applications on Notice, Default and Inquest.](#))

Defendant's Default During the Litigation

A plaintiff can seek a default judgment when the defendant has defaulted during the course of the litigation; that is, after the defendant has appeared. The types of conduct that can be the basis of a motion for a default judgment include:

- A failure to plead, such as a defendant's failure to answer a complaint, after it appeared in response to a summons with notice (CPLR 3012(b)).
- A defendant's failure to appear at:
 - a scheduled trial;
 - a call of the calendar; or
 - any conference.(CPLR 3215(a); 22 NYCRR § 202.27(a).)
- A failure to provide pretrial disclosure (CPLR 3126; *Reynolds Sec., Inc.*, 406 N.Y.S.2d at 745-46; *JNG Constr., Ltd.*, 96 N.Y.S.3d at 659).

A default in responding to a motion generally is not a basis to seek a default judgment. If the party opposing the motion fails to serve and file opposition papers, the court typically grants the motion "on default" after reviewing it to determine the motion is prima facie meritorious. If the movant fails to prosecute the motion by, for example, failing to appear at a required motion hearing, the court typically either denies the motion or marks it off the calendar.

Procedure

The procedure depends on the type of damages that the plaintiff seeks. If the plaintiff makes the application within a year of the default, and the claim is for a sum certain, see [Plaintiff's Application Before the Clerk: Procedure](#).

If the plaintiff makes the application more than a year after the default, or if the action is not for a sum certain, see [Plaintiff's Motion Before the Court: Procedure](#).

When to Move

A party generally must move for a default judgment within one year of the default (see [Plaintiff's Application Before the Clerk: When to Move](#) and [Plaintiff's Motion Before the Court: When to Move](#)).

Where to Move

An application for a default judgment before the clerk must be made in the county where the action is venued. Counsel should review the court's website and local rules or contact the clerk of the court to confirm where the papers should be filed in paper-filed cases. In some counties, the papers should be submitted to the judgment clerk (see, for example, [New York County, County Clerk, County Clerk Functions and Offices, Litigation-Related Functions, B. Judgments, 2\) In Civil Actions: Judgments on Default](#)).

In e-filed cases, counsel should select from the drop-down document menu "Clerk Default Judgment (Proposed)" and upload the applicable papers. The submission is routed automatically to the county clerk's judgment clerk.

Similarly, unless a rule provides otherwise, a motion for a default judgment made before the court should be made in the county where the action is venued (CPLR 3215(e)).

Necessary Papers

The papers necessary to obtain a default judgment vary depending on whether the plaintiff seeks a default judgment before the clerk or the court (see [Plaintiff's Application Before the Clerk: Necessary Papers](#) and [Plaintiff's Motion Before the Court: Necessary Papers](#)).

Plaintiff's Default During the Litigation

Under CPLR 3215(a), a defendant can seek a default judgment for costs before the clerk when:

- The plaintiff fails to proceed in an action called for trial.
- The court orders a dismissal for a neglect to proceed.

(CPLR 3215(a); 22 NYCRR 202.27(b); *EMC Mtge. Corp. v. Walker*, 105 N.Y.S.3d 914, 915 (2d Dep't 2019))

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(dismissal of an action after the plaintiff defaulted at a court conference.)

A plaintiff also can default by failing to provide pretrial disclosure ordered by a court. However, an order from the Court dismissing the case as a discovery sanction usually is sufficient for the defendant to then seek entry of a judgment dismissing the case or for the plaintiff to seek an inquest or for the clerk to enter judgment for a sum certain (CPLR 3215(a); Practice Commentary C3215:5 to McKinney's CPLR 3215).

Procedure

The defendant must submit to the clerk the necessary papers and the clerk enters a judgment for costs (CPLR 3215(a); see Plaintiff's Default During the Litigation: Necessary Papers).

When to Move

The defendant must apply to the clerk for a default judgment within one year of the plaintiff's default (CPLR 3215(a)).

Where to Move

An application for a default judgment before the clerk must be made in the county where the action is venued. Counsel should review the court's website and local rules or contact the clerk of the court to confirm where the papers should be filed in paper-filed cases. In some counties, the papers should be submitted to the judgment clerk (see, for example, [New York County, County Clerk, County Clerk Functions and Offices, Litigation-Related Functions, B. Judgments, 2\) In Civil Actions: Judgments on Default](#)).

In e-filed cases, counsel should select from the drop-down document menu "Clerk Default Judgment (Proposed)" and upload the applicable papers. The submission is routed automatically to the county clerk's judgment clerk.

Necessary Papers

A default judgment against a plaintiff includes statutory costs in favor of the defendant (CPLR 3215(a)). The types and amounts of costs that a party can recover are set by statute and are often nominal (CPLR 8201). For that reason, counsel sometimes waive them.

To obtain a judgment for costs, the defendant must file with the clerk:

- A proposed judgment (see Proposed Judgment).
- Proof of the default (see Proof of the Default).

- A bill of costs, if the defendant seeks costs (CPLR 8401, 8402, and 8403; for more information on the bill of costs, see [Practice Note, Preparing a Judgment in New York State Supreme Court: Bill of Costs](#)).
- A judgment-roll, if not prepared by the clerk (CPLR 5017(b); for more information on the judgment-roll, see [Practice Note, Preparing a Judgment in New York State Supreme Court: The Judgment-Roll](#)).

(CPLR 3215(a).)

An RJL is not required for an application for a clerk's default (22 NYCRR § 202.6(a)).

Any Party's Default on a Settlement Agreement

Either party can seek a default judgment if the opposing party fails to comply with a settlement agreement where that agreement is set forth in a stipulation that expressly so provides and was made while an action was pending (CPLR 3215(i) and 5003-a(e); *Serino Coyne Inc. v. Circle Repertory Co.*, 621 N.Y.S.2d 273, 274 (Sup. Ct. N.Y. Co. 1994)).

Procedure

The party seeking the default based on the stipulation must submit to the clerk the necessary papers and the clerk will then enter a judgment based on that stipulation with interest, if any (CPLR 3215(i); see [Any Party's Default on a Settlement Agreement: Necessary Papers](#)).

A plaintiff also may enter judgment against a settling defendant that has failed to pay the settlement amount within 21 days after the plaintiff tenders to the defendant:

- An executed release.
- A stipulation discontinuing the action executed by the plaintiff.

(CPLR 5003-a(e).)

Certain governmental subdivisions have additional time – 90 days – in which to pay the settlement (CPLR 5003-a(b), (c)). If the settlement requires judicial approval, the plaintiff also must submit the order approving the settlement (CPLR 5003-a(d)).

The judgment will be in the amount set out in the release, with interest from the date on which the release and stipulation of discontinuance were tendered and costs and disbursements (CPLR 5003-a(e)).

When to Move

Other than as may be provided in the stipulation, there is no express statutory time limit to seek a default judgment based on a failure to comply with a settlement agreement (CPLR 3215(i); *Marine Midland Bank, N.A. v. Worldwide Indus. Corp.*, 763 N.Y.S.2d 27, 29 (1st Dep't 2003)).

Where to Move

An application for a default judgment before the clerk must be made in the county where the action is venued. Counsel should review the court's website and local rules or contact the clerk of the court to confirm where the papers should be filed in paper-filed cases. In some counties, the papers should be submitted to the judgment clerk (see, for example, [New York County, County Clerk, County Clerk Functions and Offices, Litigation-Related Functions, B. Judgments, 2\) In Civil Actions: Judgments on Default](#)).

In e-filed cases, counsel should select from the drop-down document menu "Clerk Default Judgment (Proposed)" and upload the applicable papers. The submission is routed automatically to the county clerk's judgment clerk.

Necessary Papers

To obtain a default judgment based on noncompliance with a settlement agreement, counsel must submit to the clerk:

- The stipulation of settlement, which must:
 - provide that on failure to comply with the stipulation, the clerk can enter judgment without further notice;
 - if in favor of the plaintiff, set out the amount of the judgment to be entered, the amount of interest, if any, and the date interest begins; or
 - if in favor of the defendant, provide for dismissal of the action.
- An affidavit stating that the opposing party failed to comply with the stipulation.
- If the judgment is in favor of the plaintiff, either:
 - a copy of the complaint; or
 - a concise statement of the facts on which the claim is based.
- If the judgment is in favor of the defendant, either:
 - copies of the pleadings; or
 - a concise statement of the facts on which the claim and defense are based.

(CPLR 3215(i)(1), (2).)

Required Proof

Proposed Judgment

If the plaintiff seeks a clerk's judgment for a sum certain, the proposed judgment should be in the amount demanded in the complaint or summons with notice. The judgment should include a line for interest and costs, which the clerk calculates. (CPLR 3215(a).)

A defendant's application to the clerk should include a proposed judgment dismissing the action. If the defendant seeks costs, the judgment should include a line for costs, which the clerk calculates (CPLR 3215(a)).

For more information on preparing a judgment, see [Practice Note, Preparing a Judgment in New York State Supreme Court](#).

Proof of Service of Process

Proof of service of process on the defaulting defendant usually consists of an affidavit of a process server together with a copy of the process that was served. The affidavit must show that the defaulting defendant was served properly with either:

- A summons and complaint.
- A summons with notice.

(CPLR 3215(f).)

A court will not enter a default judgment unless there is proof of proper service of process (*Oyague v. Schwartz*, 940 N.Y.S.2d 686, 687 (3d Dep't 2012)).

If the plaintiff served the defendant with process outside of New York, counsel should consider including in counsel's affirmation facts showing the basis for the court's long-arm jurisdiction.

Proof of the Facts and the Amount Due

Proof of the facts constituting the claim and the amount due usually consists of the plaintiff's affidavit, also known as an affidavit of merit. Instead of an affidavit of merit, the plaintiff can submit a verified complaint to establish the facts, if it was verified by the plaintiff and not her lawyer (CPLR 3215(f)). Because a defaulting defendant is deemed to admit all the factual allegations in the complaint, the affidavit or verified complaint only need allege "enough facts to enable a court to determine that a viable cause of action exists" (*Woodson v. Mendon Leasing Corp.*, 760 N.Y.S.2d 727, 733 (2003); see also *First Franklin Fin. Corp. v. Alfau*, 70 N.Y.S.3d 518, 520 (2d Dep't 2018)). The

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plaintiff may submit additional affidavits if needed to establish any aspect of the claim. All affidavits should be made on personal knowledge. The plaintiff should attach to the affidavit, as exhibits, any relevant documents establishing the claim and amount due.

Where the State of New York is the plaintiff, it proves the claim and amount due by the affidavit of an attorney from the office of the attorney general who has or obtains knowledge of the facts through review of state records or otherwise (CPLR 3215(f)).

Proof of the Default

Proof of the defendant's default usually consists of the plaintiff's lawyer's affidavit or affirmation. The plaintiff's lawyer has personal knowledge of whether the defendant made an appearance in the action, which is done by the defendant serving a notice of appearance, an answer, or a pre-answer motion (CPLR 320(a)).

If the plaintiff defaulted, the affidavit or affirmation of the defendant's lawyer establishes proof of the plaintiff's default.

When the motion is based on a litigation default, such as when a party does not appear at a scheduled calendar call or conference, the opposing party can request that the court note the default on the record and enter an order granting judgment on default in favor of the plaintiff or dismissing the action (22 NYCRR § 202.27; see *Hill v. McCrae*, 45 N.Y.S.3d 273, 274-75 (3d Dep't 2017) (noting that the plaintiff orally moved for a default judgment when the defendant failed to appear at a conference)). If a court reporter is present, the default in appearance should be noted on the record and the transcript ordered and certified. If not, counsel should request the notation of the default from the judge or the clerk of the courtroom where the default occurred and attach it to the affidavit or affirmation.

Proof of Notice of the Application

Except as provided under CPLR 3215(g), the plaintiff is not required to give a defaulting defendant notice of the application when both:

- The defendant failed to appear in the action.
- The plaintiff seeks a default judgment within a year after the default occurred.

(CPLR 3215(g)(1); *Milman & Shwergold, P.C. v. Chase Manhattan Bank, N.A.*, 481 N.Y.S.2d 368, 370 (1st Dep't 1984); *United Indus. Corp. v. Shreiber*, 379 N.Y.S.2d 404,

406-07 (1st Dep't 1976); see also *Rivera v. Laporte*, 466 N.Y.S.2d 606, 608-09 (Sup. Ct. N.Y. Co. 1983) (holding that the plaintiff must give non-defaulting defendants notice of the motion for the default judgment).)

In that instance, the plaintiff can move for leave to enter the default judgment *ex parte*.

CPLR 3215(g) requires the plaintiff to give certain defaulting defendants additional notice prior to seeking entry of a default judgment. Depending on the circumstances, the plaintiff must give either:

- **Five days' notice** (see Five Days' Notice to Defendants That Have Appeared and to All Defendants More Than One Year After the Default and Five Days' Notice to Non-Appearing Defendants That Demand Notice).
- **Twenty days' notice** (see 20 Days' Notice to Non-Appearing Persons Sued for Nonpayment of Contractual Obligations and 20 Days' Notice to Non-Appearing Corporate Defendants Served Under BCL § 306(b)).

Where additional notice is required, the plaintiff should submit proof of this additional notice with its papers. The proof of notice is an affidavit by the person who mailed the notice and is known as an affidavit of additional notice or mailing. Depending on the applicable notice requirement, failure to serve or file the notice may render the judgment defective.

Five Days' Notice to Defendants That Have Appeared and to All Defendants More Than One Year After the Default

Unless otherwise required in specific actions, the plaintiff must give the defendant at least five days' notice of the application for a default judgment (whether made before the clerk or the court) when either:

- The defendant has appeared in the action (relating to defaults that occur during the litigation). Where the default consists of the defendant's failure to appear at a scheduled trial, the court can dispense with this notice requirement.
- More than one year has elapsed since the default, whether or not the defendant has appeared, unless the court orders otherwise.

(CPLR 3215(g)(1).)

The Departments have taken different approaches regarding the effect of a plaintiff's failure to give notice under CPLR 3215(g)(1) (see *Paulus v. Christopher Vacirca, Inc.*, 6 N.Y.S.3d 572, 574, 576-78 (2d Dep't 2015) (discussing the different approaches)).

Counsel should err on the side of providing notice. For example, courts have found that correspondence can qualify as an appearance, requiring the plaintiff to give the defendant notice (*Leader Federal Bank for Sav. v. Van Tienhoven*, 692 N.Y.S.2d 258, 259 (4th Dep't 1999); *Fleet Fin. Inc. v. Nielsen*, 650 N.Y.S.2d 904, 905 (3d Dep't 1996)).

Five Days' Notice to Non-Appearing Defendants That Demand Notice

Where the motion for a default judgment must be made before the court, the plaintiff must give the defendant at least five days' notice of the time and place of the reference or assessment by a jury when the defendant both:

- Has failed to appear in the action.
- Served on the plaintiff a written demand for notice of any reference or assessment by a jury.

(CPLR 3215(g)(2).)

Under the express provisions of the statute, this requirement is limited to cases where the court orders a reference or assessment by a jury. It apparently does not apply when the court conducts the inquest itself (Practice Commentary C3215:19 to McKinney's CPLR 3215). The defendant's service of the demand is not an appearance in the action (CPLR 3215(g)(2)).

The plaintiff must serve the notice in the same manner as service of papers generally (CPLR 3215(g)(2)).

20 Days' Notice to Non-Appearing Persons Sued for Nonpayment of Contractual Obligations

The plaintiff must give the defendant at least 20 days' notice before the entry of the default judgment when:

- The defendant is a natural person.
- The defendant has failed to appear in the action.
- The action is for nonpayment of a contractual obligation.

(CPLR 3215(g)(3)(i).)

To give notice, the plaintiff must mail a copy of the summons to the defendant at his:

- Place of residence.
- Place of employment, if either:
 - before the entry of a default judgment, the mailing to the place of residence is returned as undeliverable; or
 - the place of residence is unknown.

- Last known residence if the place of:
 - residence is unknown; and
 - employment is unknown.

(CPLR 3215(g)(3)(i).)

The mailing must be:

- By first class mail.
- In an envelope that:
 - is marked "personal and confidential"; and
 - does not indicate that it is from an attorney or concerns an alleged debt.
- Made either with or after service of the summons on the defendant.

(CPLR 3215(g)(3)(i), (ii).)

The affidavit of mailing must be filed with the judgment (CPLR 3215(g)(3)(ii)).

The court should deny a motion for leave to enter a default judgment if the plaintiff fails to comply with the additional notice requirement (*Confidential Lending, LLC v. Nurse*, 992 N.Y.S.2d 77, 80 (2d Dep't 2014) (affirming denial of motion for leave to enter a default judgment where the plaintiff failed to give notice under CPLR 3215(g)(3)(i))).

However, failure to serve the notice, by itself, is not grounds to vacate a default judgment. To vacate the default judgment, the defendant must demonstrate a reasonable excuse for the default and a potentially meritorious defense or other objection (see *Crespo v. A.D.A. Mgt.*, 739 N.Y.S.2d 49, 53 (1st Dep't 2002); *Rothschild v. Finkelstein*, 670 N.Y.S.2d 331, 331 (2d Dep't 1998)).

This additional notice requirement does not apply to cases in the small claims part, summary proceedings to recover possession of real property, or actions affecting title to real property, except for residential mortgage foreclosure actions (CPLR 3215(g)(3)(iii)).

20 Days' Notice to Non-Appearing Corporate Defendants Served Under BCL § 306(b)

The plaintiff must give the defendant 20 days' notice before the entry of the default judgment when:

- The defendant is either:
 - a domestic corporation; or
 - an authorized foreign corporation.

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- The plaintiff served process on the defendant under Business Corporation Law (BCL) § 306(b).
- The defendant has failed to appear in the action.

(CPLR 3215(g)(4).)

Under the statute's express terms, this notice requirement does not apply to limited liability companies (*Tan v. AB Capstone Dev., LLC*, 83 N.Y.S.3d 86, 89 (2d Dep't 2018)).

To give notice, the plaintiff must mail a copy of the summons to the defendant:

- By first class mail.
- To its last known address.
- Either with or after service of the summons under BCL 306(b).
- With a notice to the defendant that service is being made or has been made under BCL 306(b).

(CPLR 3215(g)(4).)

The affidavit of mailing must be filed with the judgment (CPLR 3215(g)(4)(ii)). The court should deny the motion if the affidavit is not included with the motion papers (*Balaguer v. 1854 Monroe Ave. Hous. Dev. Fund Corp.*, 894 N.Y.S.2d 749 (1st Dep't 2010); *Schilling v. Maren Enters., Inc.*, 754 N.Y.S.2d 564, 565 (2d Dep't 2000)). However, the court can excuse the failure to file timely the proof of notice under certain circumstances (see *Crespo*, 739 N.Y.S.2d at 53 (excusing failure to file proof of notice where the plaintiff actually gave appropriate notice)).

This additional notice requirement does not apply to cases in the small claims or commercial claims parts, summary proceedings to recover possession of real property, or actions affecting title to real property (CPLR 3215(g)(4)(iii)).

Affidavit of Non-Military Status

Under federal law, a court cannot enter a default judgment unless the plaintiff files an affidavit setting out facts showing that the defendant is not in the military service. (50 U.S.C. § 3931; NY Military Law § 303(3); *Citibank, N.A. v. McGarvey*, 765 N.Y.S.2d 163, 167 (Richmond Co. Civ. Ct. 2003)).

Counsel typically support the affidavit with a certificate verifying the active duty status for an individual, which is available on the US Department of Defense's Service members Civil Relief Act (SCRA) [website](#). If the plaintiff cannot determine the defendant's military status, the affidavit should state that (50 U.S.C. § 3931(b)(1)).

If the defendant is in military service, the court cannot enter a default judgment unless the court has appointed an attorney to represent the defendant (50 U.S.C. § 3931(b)(2); N.Y. Mil. Law § 303(1)).

Other Papers

Depending on the case, counsel may need to submit these additional papers for the motion:

- A certificate of conformity. If an affidavit, such as the plaintiff's affidavit of merit, is executed and sworn outside of New York state, it must include a certificate of conformity. (CPLR 2309(c); see also [Standard Document, Affidavit \(NY\): Certificate of Conformity](#).)
- Proof of attachment of the defendant's property, in actions where jurisdiction is based on an attachment of the defendant's property (*quasi in rem* jurisdiction). The affidavit should set out:

- that the attachment has been levied;
- a description of the property; and
- the value of the property.

(CPLR 3215(f)).

- Additional proof required for consumer credit matters (22 NYCRR §§ 202.27-a and 202.27-b; see also [New York State Unified Court System: Consumer Credit Reform Rules & Resources](#)). The additional proof is not required for motions made under CPLR 3215(b) (22 NYCRR § 202.27-a(j)).

Opposing a Motion for a Default Judgment

A defendant opposing a motion for a default judgment generally must demonstrate either that there was no default or both a reasonable excuse for the default and a potentially meritorious defense (*Schimoler*, 107 N.Y.S.3d at 113-14; see also *Hill*, 45 N.Y.S.3d at 275 (applying standard to a motion to vacate a default judgment entered under 22 NYCRR § 202.27)). The court considers several factors to determine whether there was a reasonable excuse for the default, including:

- The length of the delay.
- Whether the default was willful.
- Whether there is prejudice to the plaintiff.
- The state's policy of resolving disputes on the merits.

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(*Crosby ex rel. Crosby v. Barry*, 64 N.Y.S.3d 61, 62 (2d Dep't 2017) (discussing standard to oppose a motion for leave to enter a default judgment); *Golden v. Romanowski*, 9 N.Y.S.3d 653, 655 (2d Dep't 2015) (discussing standard to vacate a default under CPLR 5015(a)(1)).)

The court also can consider law office failure as a reasonable excuse (CPLR 2005).

However, where the court has not yet entered an order or judgment of default, the First Department holds that an affidavit of merit may not be essential. It is within the court's discretion to excuse the default even without an affidavit of merit after considering the above factors (*Naber Elec. v. Triton Structural Concrete, Inc.*, 75 N.Y.S.3d 152, 153 (1st Dep't 2018)). The Second Department requires an affidavit of merit even if a default judgment has not yet been entered (*Juseinoski v. Bd. of Educ. of City of New York*, 790 N.Y.S.2d 162, 166 (2d Dep't 2005)). (See also *Invalid Clerk's Judgment*.)

Waiver

A party can waive the right to seek a default judgment. This can occur when:

- A party seeks a default beyond the time limits set out in CPLR 3125. A party generally must seek a default judgment within one year of the default.
- For a pleading default, a party accepts the untimely served pleading without objection and without returning it (*Glass v. Captain Hulbert House, LLC*, 959 N.Y.S.2d 247, 248-49 (2d Dep't 2013); see also *Rossini Excavating Corp. v. Shelter Rock Builders, LLC*, 931 N.Y.S.2d 874, 875 (1st Dep't 2011) (holding that the plaintiff waived its objections to the late service of the defendant's answer by serving a reply to the defendant's counterclaims)).

Plaintiff's Waiver

If the plaintiff fails to seek a default judgment within one year of the default, the court can dismiss the complaint as abandoned (CPLR 3215(c)). The court can dismiss the complaint on either:

- Its own motion.
- The defendant's motion.

(CPLR 3215(c).)

The court can excuse the plaintiff's delay in seeking a default if the plaintiff demonstrates both:

- A reasonable excuse for the delay in taking proceedings to enter a default judgment.
- A potentially meritorious action.

(CPLR 3215(c); *Private Capital Grp., LLC v. Hosseinipour*, 95 N.Y.S.3d 585, 587 (2d Dep't 2019); *Bank of New York Mellon v. Izmirligil*, 44 N.Y.S.3d 44, 46-47 (2d Dep't 2016); *Fuentes v. Hoffman*, 987 N.Y.S.2d 758, 759 (4th Dep't 2014).)

The plaintiff must make the same showing to vacate a dismissal order entered under CPLR 3215(c) (CPLR 3215(c); *U.S. Bank N.A. v. White*, 102 N.Y.S.3d 449, 450 (2d Dep't 2019); *Checksfield v. Berg*, 49 N.Y.S.3d 205, 206-07 (3d Dep't 2017), appeal dismissed, 78 N.E.3d 1191 (2017), rearg. denied, 85 N.E.3d 1018 (2017), and cert. denied, 139 S. Ct. 151 (2018)). The determination of whether to vacate is within the court's discretion (*White*, 102 N.Y.S.3d at 450).

Defendant's Waiver

A defaulting defendant has the right to dismissal of the case if the plaintiff fails to seek a default judgment within one year of the default (CPLR 3215(c)). A defendant can waive that right if, after the default, the defendant appears in the action either formally or informally (*Torres v. Jones*, 27 N.Y.S.3d 468, 490 (2016); *Private Capital Grp., LLC*, 95 N.Y.S.3d at 586; *Myers v. Slutsky*, 527 N.Y.S.2d 464, 465 (2d Dep't 1988)). However, a defendant's motion to dismiss under CPLR 3215(c) is not an appearance in the action (CPLR 3215(c)).

Strategies

For the Defendant

If the plaintiff moves for a default judgment based on the defendant's failure to appear, and the motion is within one year of the default, in addition to opposing the motion (see *Opposing a Motion for a Default Judgment*), the defendant should:

- Attempt to cure the default by serving an answer.
- Move or cross-move to:
 - obtain an extension of time to serve an answer; or
 - compel the plaintiff to accept a late answer.

(CPLR 2004 and 3012(d); *Yongjie Xu*, 53 N.Y.S.3d at 661.)

If the plaintiff makes a motion for a default judgment more than a year after the default, the defendant should move to dismiss the action (CPLR 3215(c)). In addition, the defendant should request that in the dismissal order the court describe the conduct constituting the plaintiff's neglect and state that the conduct demonstrates a "general pattern of delay in proceeding with the litigation." Alternatively, the defendant should request that the dismissal be with prejudice. Otherwise, the

plaintiff may be able to start another, identical action despite the expiration of the statute of limitations within six months of the dismissal (CPLR 205(a); *U.S. Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr. v. Moomey-Stevens*, 91 N.Y.S.3d 788, 791 (3d Dep't 2019); *Wells Fargo Bank, N.A. v. Eitani*, 47 N.Y.S.3d 80, 84 (2d Dep't 2017)).

For the Plaintiff

If the defendant attempts to cure a pleading default by serving a late pleading, the plaintiff should object to its lateness and immediately return the document to avoid a waiver of the right to seek a default.

Post-Default Judgment Procedure

The plaintiff must serve the judgment with notice of entry to start the time period in which the defendant can move to set it aside. A defaulting defendant can move to vacate a default judgment within one year after obtaining knowledge of entry of the judgment or one year after service of a copy of the judgment with written notice of its entry (CPLR 317 and 5015(a)).

For more information on notice of entry, see [Standard Document, Notice of Entry \(NY\)](#).

Service of a money judgment is not necessary for enforcement under CPLR Article 52. Instead, a money judgment only needs to be entered. (*Donaghy v. Donaghy*, 611 N.Y.S.2d 55, 56 (3d Dep't 1994); *Herbert H. Levens & Co. v. Celebrity Knitwear, Inc.*, 498 N.Y.S.2d 974, 975 (Sup. Ct. N.Y. Co. 1986).)

For equity judgments (not including judgments awarding the possession of real property or a chattel), a party generally must serve the judgment to obtain a contempt order for failure to comply (CPLR 5104).

Effect of a Default Judgment

Res judicata applies to a judgment entered on default and not vacated. *Res judicata* bars claims that were or could have been raised in the prior action (see *Jasper v. Rozinski*, 228 N.Y. 349, 357 (1920); *Eaddy v. U.S. Bank N.A.*, 119 N.Y.S.3d 212, 214 (2d Dep't 2020); *Zayatz v. Collins*, 851 N.Y.S.2d 797, 799 (4th Dep't 2008); *119 Rosset Corp. v. Blimpy of N.Y. Corp.*, 409 N.Y.S.2d 735, 736 (1st Dep't 1978)).

However, when the court dismisses an action under 22 NYCRR § 202.27(b) due to the plaintiff's default for failure to appear at a court conference, the dismissal is

not a determination on the merits and does not have preclusive effect (*Hernandez v. St. Barnabas Hosp.*, 931 N.Y.S.2d 875, 875 (1st Dep't 2011); *Franchise Acquisitions Grp. Corp. v. Jefferson Valley Mall Ltd. P'ship*, 900 N.Y.S.2d 906, 906 (2d Dep't 2010)).

Default judgments generally do not have collateral estoppel effect (see *Kaufman v. Eli Lilly & Co.*, 492 N.Y.S.2d 584, 589 (1985); but see *In re Abady*, 800 N.Y.S.2d 651, 661 (1st Dep't 2005) (holding that collateral estoppel may apply to default judgments under certain circumstances)).

Appeals

Default Judgments

A judgment entered on default is not directly appealable (CPLR 5511). A judgment is entered on default when there is no opposition to the motion for leave to enter the default. To obtain relief from a judgment entered on default, an aggrieved party must move to vacate the judgment and, if necessary, appeal from the denial of the motion to vacate. (CPLR 5511; see *Bank of New York Mellon Tr. Co., N.A. v. Sukhu*, 83 N.Y.S.3d 70, 72 (2d Dep't 2018); see also *Hutchinson Burger, Inc. v. Bradshaw*, 50 N.Y.S.3d 267 (1st Dep't 2017) (holding that proper procedure to challenge a default is to move to vacate under CPLR 5015(a) and not a motion to renew or reargue).)

However, if the motion for a default judgment was contested, where, for example, a plaintiff moves for a default judgment and the defendant opposes the motion, then the judgment is appealable (*Cole-Hatchard v. Eggers*, 18 N.Y.S.3d 100, 102 (2d Dep't 2015)).

The appellate court reviews the grant of a default judgment under an abuse of discretion standard and, even absent abuse of discretion, can substitute its own discretionary determination (*Crespo*, 739 N.Y.S.2d at 52).

Ex Parte Orders

There is no right of appeal from an order deciding an *ex parte* motion (*Goldstein v. Khurshid*, 116 N.Y.S.3d 580 (2d Dep't 2020)). A party aggrieved by an order entered on an *ex parte* motion can move:

- For permission to appeal under CPLR 5701(c).
- To vacate or modify the order under CPLR 5704(a).

(*Goldstein*, 116 N.Y.S.3d 580 (declining to grant leave to appeal from an order deciding an *ex parte* motion); *NYCTL 2012-A Tr. v. Phillip*, 43 N.Y.S.3d 96, 96 (2d Dep't

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2016) (deeming appeal from an order denying an *ex parte* motion as an application under CPLR 5704(a).)

A motion under CPLR 5704(a) is not an appeal but offers the opportunity for review of an order made without notice. (CPLR 5704(a); *Nationstar Mtge., LLC v. Martin*, 65 N.Y.S.3d 715 (1st Dep't 2017); see also Practice Commentary C5704:1 to McKinney's CPLR 5704.)

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