

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Advocate's VIEW

How to get a judgment without a judge

You would think that a judgment always comes from a judge, and in most cases they do. But the CPLR gives plaintiffs several ways to obtain a money judgment directly from the county clerk. These CPLR provisions bypass the judge and sometimes allow entry of a judgment without notice to the defendant.

When a “clerk’s judgment” is available, an applicant may submit a proposed judgment, bill of costs, and other materials specified in the applicable CPLR provision directly to the county clerk, even if no RJL has been filed. The clerk will sign and enter the judgment, which may be enforced against the defendant like any other kind of judgment.

A “clerk’s judgment” may be obtained quickly and without notice, but have the same effect as a judgment issued following a motion or trial.

Default judgments

CPLR 3215(a) permits a plaintiff to obtain a judgment directly from the county clerk when a defendant “has failed 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.” However, the clerk may only issue a default judgment “[i]f the plaintiff’s claim is for a sum certain or for a sum which can by computation be made certain.” Thus, the clerk may only issue a default judgment if there is no discretion involved in calculating damages, such as a claim for a fixed amount due under a contract. If the claim requires additional fact finding, such as a personal injury or lost profits claim, the plaintiff “shall apply to the court for judgment.” In other words, the plaintiff must make a motion to the judge, filing an RJL if necessary.

Under CPLR 3215(f), obtaining a



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Daily Record
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clerk’s judgment requires filing of proof of service of the summons and complaint and affidavits establishing both the facts of the claim and the defendant’s default.

As the statute makes clear, plaintiffs who anticipate a default may serve a verified complaint, which may take the place of “the affidavit of

the facts constituting the claim and the amount due.”

In most cases, a defendant who fails to appear within the required time after service of process is not entitled to any notice of a default judgment application to the clerk. If a defendant files a notice of appearance, but fails to serve a timely answer, the plaintiff may seek a default judgment on five days’ notice. CPLR 3215(g) (1). There are also provisions that require supplemental service of process in actions for breach of contract against natural persons, CPLR 3215(g)(3), and actions against corporations served via the secretary of state, CPLR 3215(g)(4). If a case falls within these notice requirements and there is a chance that the defendant will default, the plaintiff should perform the supplemental service contemporaneously with traditional service.

Obtaining a default judgment is not an automatic end to the action, as the defendant may move to set aside the judgment on a showing of a reasonable excuse for its default, a meritorious defense to the plaintiff’s claims, and lack of prejudice to the plaintiff from the delay. However, the defendant must make this showing based on

facts offered in admissible form by someone with personal knowledge. See *Brehm v. Patton*, 55 AD3d 1362, 1363 (4th Dept. 2008). A vague or contrived excuse for defaulting may result in a denied motion to vacate and continued subjection to restraining notices and executions.

Settlement agreements providing for default judgments

CPLR 3215(i) addresses a different kind of default judgment in the context of settlement stipulations reached “after commencement of an action.” Under this provision, parties may stipulate that if the defendant fails to comply with the terms of settlement, the plaintiff may obtain a clerk’s judgment “without further notice.” CPLR 3215(i)(1). Alternatively, the parties may agree that the plaintiff’s non-compliance permits the defendant to enter judgment dismissing the action, also without notice. CPLR 3215(i)(2). The party making the application must provide an affidavit establishing the non-compliance and the complaint “or a concise statement of the facts on which the claim was based.” PLR 3215(i)(1)-(2).

This provision allows parties to skip the step of suing or bringing a motion if a party violates a stipulation of settlement, and go straight to the clerk for a judgment. But it is not the only CPLR provision that allows a direct trip to the clerk’s office if a settlement agreement falls through.

Judgment for prompt payment following settlement

Another aid for enforcing settlements reached in the course of litigation is CPLR 5003-a(a). Under this rule, if an action is settled and the parties do not agree

Continued on next page

Continued from previous page

otherwise, the settling defendant must pay the plaintiff all amounts due to the plaintiff within twenty-one days of delivery of an executed release and stipulation of discontinuance. Different time periods apply if the defendant is the state, a municipality, or other public entity. CPLR 5003-a(b)-(c). If the defendant fails to make a complete and timely payment, the plaintiff may obtain judgment from the clerk “without further notice” for all unpaid amounts. CPLR 5003-a(e).

CPLR 5003-a may become a critical factor when parties enter into bare-bones settlement agreements, or simply exchange releases and a stipulation of discontinuance without documenting the timing of payment. If only the creditor side to a settlement is aware of CPLR 5003-a, the debtor may be subject to a fairly short deadline to pay in full or find itself subject

to a surprise judgment.

Confession of judgment

CPLR 3218 allows a party to obtain a money judgment without commencing an action. All that is needed is an affidavit from the debtor “stating the sum for which judgment may be entered, authorizing the entry of judgment,” and providing other details such as the facts giving rise to liability. CPLR 3218(a). The receiving party then has up to three years to file the affidavit and obtain a judgment from the clerk, without notice to the debtor. CPLR 3218(b). No notice to the debtor is required.

An affidavit of confession is a useful tool to secure compliance with a settlement. If the parties work out a pre-suit settlement but the creditor is concerned about non-payment, obtaining an affidavit of confession almost assures compliance unless the

debtor becomes judgment-proof. After all, the debtor must sign a notarized document admitting to the debt owed, knowing that the creditor’s lawyer will keep the affidavit in her file and deliver it to the clerk in the event of a breach.

These CPLR provisions allow a party to obtain a money judgment – the end goal for most creditors – with minimal effort and often without notice to the debtor. Knowing about each of these provisions, regardless of what side you’re on, is essential to enforcing your client’s rights and avoiding unpleasant surprises.

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