

**Whosoever Will Community Church of Christ v  
Beebe**

2019 NY Slip Op 33139(U)

October 18, 2019

Supreme Court, New York County

Docket Number: 158441/2018

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM**

*Justice*

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**INDEX NO. 158441/2018**

WHOSOEVER WILL COMMUNITY CHURCH OF CHRIST,

**MOTION DATE 06/07/2019**

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

CATHERINE JOHNSON BEEBE and SHILOH KINGDOM  
DELIVERANCE INTERNATIONAL MINISTRIES

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15  
were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents,

In this action to void a deed, plaintiff WHOSOEVER WILL  
COMMUNITY CHURCH OF CHRIST moves for a default judgment based  
upon the failure of defendants CATHERINE JOHNSON BEEBE and  
SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES to answer or  
appear. Plaintiff has submitted proof of service of the summons  
and complaint and proof of service of this motion upon defendant  
SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES. Plaintiff  
has also submitted an affirmation as to defendant's default  
pursuant to CPLR 3215 (f).

However, the motion must be denied because the plaintiff  
has not submitted an affidavit of facts in support of the motion  
pursuant to CPLR 3215 (f), but instead has submitted only an

affirmation which is insufficient to support the entry of a default judgment. Nor has the plaintiff included in its moving papers a copy of a sufficiently verified complaint that pursuant to CPLR 3215 (f) could act as an affidavit of facts. See Mullins v DiLorenzo, 199 AD2d 218, 219-220 (1st Dept 1993) ("This Court has held that a complaint verified by counsel amounts to no more than an attorney's affidavit and is therefore insufficient to support entry of judgment pursuant to CPLR 3215. In the absence of either a verified complaint or an affidavit by the party, the entry of judgment by default is erroneous and deemed a nullity." [citations omitted]; Georgia Pacific Corp. v Bailey, 77 AD2d 682 (3d Dept 1980).

In addition, plaintiff has not submitted proof of the additional mailing of the summons required by CPLR 3215 (g) (4) upon the corporate defendant SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES.

CPLR 3215 (g) (4) (i) states that "[w]hen a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment." The rule is

that "[a] default judgment may not be granted against a non-appearing corporate defendant without proof of compliance with the additional service requirement set forth in CPLR § 3215(g) (4) (i)." Carus & Manniello, P.C. v MLG Capital Assets LLC., 2003 NY Slip Op 50598(U), 2003 WL 1093402 (City Ct, White Plains, March 4, 2003) citing Rafa Enterprises, Inc. v Pigand Management Corp., 184 AD2d 329, 330 (1st Dept 1992) ("moving papers were deficient, having failed to set forth an affidavit of service by mail upon the last known address of the corporation, as required pursuant to CPLR 3215 (f) (4) (i)"). See, D & D Asphalt Construction Corp v Corealty, LLC, 296 AD2d 432 (2nd Dept 2002).

Finally, as to the individual defendant CATHERINE JOHNSON BEEBE there is no proof of service of the summons and complaint filed or attached to the motion as required by CPLR 3215 (f).

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is DENIED WITHOUT PREJUDICE to move again upon proper proofs in accordance with the foregoing; and it is further

ORDERED that the parties are hereby directed to attend a preliminary conference on January 28, 2020, at 9:30 A.M., at the

Courthouse, IAS Part 59, Room 331, 60 Centre Street, New York,  
New York.

**OCT 18 2019**

DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE