

**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK**

Present: Hon. Thomas Feinman
Justice

THE BUREAUS, INC.,

Plaintiff,

- against -

PEP CREATIVE CORP. and ANDREW PIPITANE
a/k/a ANDREW PIPITONE,

Defendants.

Index No. 7963/03

Motion Date: 11-3-04

Cal No.

Seq. #002

The following papers read on this motion 1 - 2

Notice of Motion and Affidavits	<u>X</u>
Affirmation in Opposition.....	<u>N/A</u>
Reply Affirmation.....	<u>N/A</u>

The plaintiff's unopposed motion for a default judgment in favor of the plaintiffs and against the defendants, and for an order amending the caption is denied.

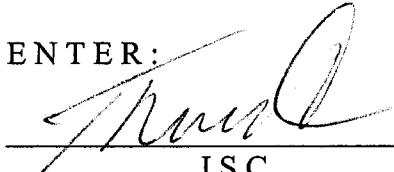
The plaintiff claims that service against the defendant, Pep Creative Corp., was effective on June 5, 2003, and that service against the defendant, Andrew Pipitone a/k/a Andrew Pipitone was effective on June 30, 2003. The plaintiff's instant application was made on September 28, 2004, more than one year after the defaults' default. CPLR §3215(a) provides that if a plaintiff's claim is for a sum certain, or for a sum by which computation can be made, the application may be made the clerk within one year of the default. CPLR §3215(c) provides that if the plaintiff fails to move for the entry of judgment within one year after the default, the Court shall not enter judgment, but shall dismiss the complaint as abandoned, unless sufficient cause is shown why the complaint should not be dismissed.

Here, plaintiff moved, initially for an order of default by motion submitted on September 4, 2003, within one year of the default. By way of short form order dated October 15, 2003, the Honorable Joseph A. DeMaro denied the motion with leave to renew upon proper proof of the facts that constitute the claim, and the amount furnished by the plaintiff. Plaintiff in the instant application has again failed to submit proper proof of the facts constituting the claim. On an application for judgment by default, the applicant shall file proof by affidavit made the party of the facts constituting the claim, and the amount due. (CPLR §3215(f)). In the instant application, plaintiff fails to submit an affidavit on behalf of the plaintiff party. Here, the verified complaint was verified by plaintiff's counsel, and not by the plaintiff, and the allegations are made "upon information and belief." Therefore, the verified complaint is insufficient as a substitute for an

affidavit by the party plaintiff. (*Joosten v. Gale*, 129 AD2d 531, 289 AD2d 844). Furthermore, plaintiff's instant application was made more than one year from the decision by the Honorable Joseph A. DeMaro.

Accordingly, the plaintiff's motion is denied in its entirety.

ENTER:


J.S.C.

Dated: December 15, 2004

cc: Silverman Sclar Shin & Byrne, PLLC
Pep Creative Corp
Andrew Pipitane a/k/a Andrew Pipitone

ENTERED

DEC 22 2004

**NAASAU COUNTY
COUNTY CLERK'S OFFICE**