

**New Jerusalem Church of the Nazarene v 2145
Church Realty LLC.**

2026 NY Slip Op 31163(U)

March 19, 2026

Supreme Court, Kings County

Docket Number: Index No. 516192/2022

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 19th day of March 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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NEW JERUSALEM CHURCH OF THE NAZARENE,

Plaintiff,

-against-

2145 CHURCH REALTY LLC.,
WRS ASSOCIATES, WILLIAM STEIN,
THE J360 CONSTRUCTION CO. LLC,

Index No. 516192/2022

Defendants.

Cal. No. 13 MS 5

-----X

2145 CHURCH REALTY LLC, et. al.,

Third-Party Plaintiffs,

-against-

Decision and Order

A&F FIRE PROTECTION CO. INC., BEST
MECHANICAL SERVICES INC., et. al.,

Third-Party Defendants.

-----X

2145 CHURCH REALTY LLC, et. al.,

Second Third-Party Plaintiffs,

-against-

MILL CREEK CONSTRUCTION CORP.,

Second Third-Party Defendant.

-----X

The following e-filed papers read herein:

MS 5

NYSCEF Doc Nos.

214-229

Upon the foregoing papers, plaintiff's motion seeking an order pursuant to CPLR 2221, 2005 and/or 5015(a), vacating plaintiff's default in appearance on October 7, 2025, and reinstating this action to the active calendar is decided as follows:

On October 7, 2025, plaintiff's counsel failed to appear for a compliance conference in which all or nearly all defendants and third-party defendants appeared resulting in this court's order dismissing the action. By the instant motion, which was filed on February 21, 2026, plaintiff's counsel explains that his non-appearance was inadvertent and resulted from his failure to properly calendar the court date. Plaintiff's counsel submits there has been enormous document discovery in this action, depositions of both the plaintiff and defendants have been long been completed, and the depositions of all third-party defendants have also been completed, excepting perhaps one. Plaintiff's counsel further submits that he has attended every scheduled conference since June 2022 and up until his non-appearance on October 7, 2025.

Plaintiff's counsel also contends plaintiff has a meritorious claim insofar as it has never been disputed that plaintiff complained to defendants, during pendency of the construction work, that defendants were causing damage to the church premises. In addition, that plaintiff's professional expert, Kevin Munene, whose report is attached to plaintiff's instant motion, opines that the damage which he observed at the church premises, beyond that shown on the pre-construction survey done before work commenced, is the result of defendants' construction activities.

Lastly, apart from seeking to vacate the dismissal order upon a showing of a reasonable excuse and a potential meritorious claim, plaintiff's counsel argues that vacatur of the default should be granted in the interest of substantial justice.

Numerous defendants and third-party defendants oppose plaintiff's application. In sum and substance, they argue that plaintiff's counsel's bare allegation of law office failure is insufficient to demonstrate a reasonable excuse for its default. In addition, they point out that plaintiff's counsel failed to provide a reasonable excuse for its lengthy delay in moving to vacate the order of dismissal. The opposition also contends that plaintiff's expert report has no probative value as it was based on an inspection conducted five years after the purported damage is alleged to have occurred, and Mr. Munene's observations fail to consider the evidence regarding the pre-existing conditions on plaintiff's property, including, but not limited to, plaintiff's own deposition testimony establishing that there were numerous overlapping structural conditions on the church property prior to the commencement of construction activities at the adjacent property.

In reply, regarding the five-month delay in seeking vacatur of the default, plaintiff's counsel references CPLR 5015 and argues that such provision places a one-year time limit for a motion to vacate based upon excusable default. In addition, plaintiff explains that it took time to search for and locate an appropriate expert to retain and that the retained expert, Mr. Munene, had other commitments which occupied him until December 6, 2025, when he was available to conduct a site visit.

Discussion

"A plaintiff seeking to vacate a default in appearing at a conference is required to demonstrate both a reasonable excuse for its default and a potentially meritorious cause of action" (*DLJ Mtge. Capital, Inc. v Brewster*, 237 AD3d 902, 903 [2d Dept 2025]). "Whether an excuse is reasonable is a determination within the sound discretion of the Supreme Court" (*id.* [citations omitted]). "The court has discretion to accept law office failure as a reasonable excuse where the claim is supported by a detailed and credible explanation of the default, but conclusory and unsubstantiated allegations of law office failure are not sufficient" (*Hudson City Sav. Bank v*

Augustin, 191 AD3d 774, 775 [2d Dept 2021] [internal quotation marks and citations omitted]).

“[M]ere neglect is not a reasonable excuse” (*id.*).

Here, although plaintiff’s counsel’s excuse of law office failure is not compelling, his failure to appear at one conference in a case that has held at least nine discovery conferences does not constitute neglect (*see Aegis SMB Fund II, L.P. v Rosenfeld*, 189 AD3d 472 [1st Dept 2020]; *see also Chelli v Kelly Group, P.C.*, 63 AD3d 632 [1st Dept 2009]). Moreover, there is no prejudice to defendants or third-party defendants who, with plaintiff, have engaged in significant discovery including nearly all relevant depositions. Given the strong public policy favoring adjudicating matters on their merits and plaintiff’s counsel’s demonstration that his failure to appear was neither willful nor part of a pattern of dilatory behavior, the court finds vacatur proper under CPLR 5015(a) and 2005.

Based on the foregoing, plaintiff’s motion is granted. The court’s order dated October 7, 2025 is vacated and the matter is restored to active status. The parties shall appear for a compliance conference on Tuesday, May 5, 2026, at 2:30 PM in courtroom 956. Any argument not explicitly addressed herein was considered and deemed to be without merit, not dispositive, or unnecessary to address in light of the court’s determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.