

**J.T. Magen & Co Inc. v Nissan N. Am., Inc.**

2025 NY Slip Op 32017(U)

June 6, 2025

Supreme Court, New York County

Docket Number: Index No. 160497/2017

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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J.T. MAGEN & COMPANY INC. (COUNTERCLAIM-  
DEFENDANT),

Plaintiffs,

- v -

NISSAN NORTH AMERICA, INC., GEORGETOWN  
ELEVENTH AVENUE OWNERS, LLC (COUNTERCLAIM  
PLAINTIFF) (CROSSCLAIM-PLAINTIFF), PHILADELPHIA  
INDEMNITY INSURANCE COMPANY, GARY FLOM, VEN  
NILVA,

Defendants.

-----X

NISSAN NORTH AMERICA, INC.

Plaintiff,

-against-

ACIM NY, LLC, ALIM MY, LLC

Defendants.

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GEORGETOWN ELEVENTH AVENUE OWNERS, LLC  
(COUNTERCLAIM PLAINTIFF) (CROSSCLAIM-PLAINTIFF)

Plaintiffs,

-against-

MISTRAL ARCHITECTURAL METAL & GLASS, INC., F.R.P.  
SHEET METAL CONTRACTING CORP.

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 1536, 1537, 1538,  
1539, 1540, 1541, 1542, 1543

were read on this motion for

LEAVE TO FILE

\_\_\_\_\_.

Plaintiff J.T. Magen & Company, Inc. (“JTM” or “Plaintiff”) moves for leave to file a motion for summary judgment. For the reasons discussed below, Plaintiff’s motion is **granted**.

### **PROCEDURAL HISTORY**

The Court previously denied Plaintiff’s first motion for summary judgment in 2019 (NYSCEF 460), Plaintiff’s first request for leave to file a second motion for summary judgment (NYSCEF 753), and Plaintiff’s request to vacate the order denying that request (NYSCEF 769), which was upheld by the First Department (NYSCEF 776). Thereafter, the Court granted in large part Defendants Defendants/Counterclaim-Plaintiffs Nissan North America, Inc. (“Nissan”), Philadelphia Indemnity Insurance Company (“PIIC”), and Georgetown Eleventh Avenue Owners, LLC’s (“Georgetown,” collectively, “Counterclaim-Plaintiffs”) motions for summary judgment, reserving the determination of damages for trial (NYSCEF 1042). After that decision was upheld by the First Department (NYSCEF 1330), the parties agreed that the Court could determine the damages for Counterclaim-Plaintiffs’ willful lien exaggeration claim without trial, and the Court did so (NYSCEF 1525).

As a result, the only remaining issue for trial is the amount of damages for Counterclaim-Plaintiffs’ fraud claim. Trial is set to begin on July 21, 2025.

### **DISCUSSION**

The Court has discretion to permit Plaintiff to make a belated motion for summary judgment upon good cause shown (CPLR 3212 [a]). Good cause may be found where intervening decisions in the case raise new grounds to seek summary judgment or narrow the scope of the issues such that consideration of the motion serves judicial economy (*see Trump Vil. Section 3, Inc. v New York State Hous. Fin. Agency*, 307 AD2d 891, 893-94 [1st Dept 2003]). JTM contends that no trial would be required if it prevails on its proposed motion, which is

directed to certain categories of damage it argues cannot be recovered as a matter of law. Further, many of JTM's arguments are premised on the Court's intervening decisions invalidating its liens and awarding damages for willful exaggeration, and thus could not have been raised at an earlier time. In particular, JTM asserts that Counterclaim-Plaintiffs cannot recover punitive damages as a matter of law, that the fraud damages would duplicate damages already awarded, and that large sums of the amount sought cannot have been caused by JTM's conduct, including disbursements for the work of nonparty contractors.

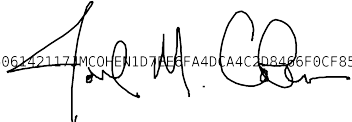
The proposed motion, if it has merit, would serve the interests of judicial economy by obviating the need for trial altogether. Though the trial date is near, there is sufficient time for Counterclaim-Plaintiffs to frame a response to the limited issues raised in Plaintiff's proposed motion. In sum, it is in the interest of the parties, the Court, and, perhaps most importantly, prospective jurors whose time will be preserved—to avoid the time and expense of trial if that is the appropriate result.

Accordingly, it is

**ORDERED** that Plaintiff's motion is **granted**; it is further

**ORDERED** that Plaintiff is granted leave to move for summary judgment by Order to Show Cause with memorandum of law in support on or before June 9, 2025, with opposition brief due June 20, 2025, and reply brief due June 25, 2025.

This constitutes the decision and order of the Court.

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**JOEL M. COHEN, J.S.C.**

6/6/2025  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: