

Hernandez v Bldg 605 W. 170th St. LLC

2025 NY Slip Op 32774(U)

August 7, 2025

Supreme Court, New York County

Docket Number: Index No. 156440/2024

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. HASA A. KINGO PART 05M

Justice

-----X

JOAQUIN HERNANDEZ,

Plaintiff,

INDEX NO. 156440/2024

MOTION DATE 07/25/2025

MOTION SEQ. NO. 001

- v -

BLDG 605 WEST 170TH STREET LLC, NEW GOLD
EQUITIES CORP., THE CITY OF NEW YORK,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

BLDG 605 WEST 170TH STREET LLC, NEW GOLD
EQUITIES CORP.

Plaintiff,

Third-Party
Index No. 595114/2025

-against-

CIGNAR CORP. D/B/A BROADWAY VISION CENTER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion for DEFAULT JUDGMENT.

Defendants/Third-Party Plaintiffs BLDG 605 West 170th Street LLC and Newgold Equities Corp. (hereinafter "Third-Party Plaintiffs") move, without opposition, for a default judgment pursuant to CPLR § 3215 against Third-Party Defendant Cignar Corp. d/b/a Broadway Vision Center ("Cignar") for failure to appear, plead, or otherwise respond to the Third-Party Complaint. The Third-Party Plaintiffs seek a default judgment and a referral to inquest on claims sounding in contractual indemnification, breach of contract, and reimbursement of costs.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a personal injury lawsuit commenced on July 16, 2024, by plaintiff Joaquin Hernandez, alleging that he sustained injuries on November 13, 2023, due to a hazardous condition on the public sidewalk abutting the premises located at 4047 Broadway, New York, New York. The premises were allegedly owned, operated, or controlled by the Third-Party Plaintiffs.

The Third-Party Plaintiffs answered on September 17, 2024. They subsequently commenced a third-party action against Cignar, their commercial tenant at the premises, by filing a Third-Party Summons and Complaint on February 3, 2025. The third-party pleading alleges that Cignar is contractually obligated under its lease to maintain and repair the sidewalk and to indemnify and hold the landlords harmless from any claims arising therefrom.

Service upon Cignar was effected on February 26, 2025, via the Secretary of State, consistent with Business Corporation Law § 306. Cignar has neither appeared nor responded. As of the date of this motion, more than the statutory time to answer has elapsed. Despite receiving two certified mail notices regarding the default, dated April 23, 2025, and June 11, 2025, Cignar has failed to respond.

ARGUMENT

Third-Party Plaintiffs argue that they are entitled to a default judgment pursuant to CPLR § 3215(a) due to Cignar's failure to appear or respond in the action, notwithstanding proper service of process and subsequent follow-up notices. In support of their motion, they submit several pieces of evidence. They provide proof of service of the Third-Party Summons and Complaint, annexed as Exhibit G, establishing that Cignar was properly served through the New York Secretary of State. They further submit proof that Cignar is an active domestic corporation authorized to do business in New York, as evidenced by a Certificate of Registration marked as Exhibit H. Additionally, they include copies of certified correspondence addressed to Cignar at its place of business, included as Exhibit I, demonstrating further attempts to provide notice of the action. Finally, they rely upon the affidavit of merit sworn to by Justin Kleinman, Executive Vice President of Newgold Equities Corp., annexed as Exhibit J. In his affidavit, Mr. Kleinman affirms the material terms of the governing lease and attests to Cignar's contractual obligation to indemnify and hold harmless the Third-Party Plaintiffs. Based on these submissions, Third-Party Plaintiffs contend that they have satisfied all procedural and substantive prerequisites for the entry of a default judgment and request that the matter be referred to an inquest on damages.

DISCUSSION

Under CPLR § 3215(a), when a defendant “has failed to appear, plead or proceed to trial,” the plaintiff may seek default judgment by submitting: 1.) proof of service of the summons and complaint; 2.) proof of the facts constituting the claim; 3.) proof of the default in appearing or answering (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]). The moving party must demonstrate a prima facie case based on competent evidence, such as an affidavit of merit or admissible proof of the underlying claim (*Joosten v Gale*, 129 AD2d 531 [1st Dept 1987]).

I. Proof of Service and Default

Third-Party Plaintiffs have established proper service by submitting the affidavit of service reflecting service through the Secretary of State under Business Corporation Law (“BCL”) § 306. This method of service is statutorily authorized for domestic corporations and deemed sufficient notice for purposes of CPLR § 3215 (McKinney's Cons. Laws of NY, BCL § 306).

Cignar has failed to appear or respond within the time permitted by CPLR § 3012(c). The affidavit of service is accompanied by a Certificate of Registration from the New York Department of State confirming Cignar's status as an active corporation, thus rebutting any claim of nonexistence or dissolution.

Certified correspondence sent to the business address further substantiates notice of this action and efforts to provide additional opportunity to respond, strengthening the fairness of granting a default.

II. Facts Constituting the Claim

The affidavit of merit submitted by Justin Kleinman satisfies the requirement of demonstrating the facts constituting the claim. The lease documents (Exhibits D and E) explicitly require Cignar, as the tenant of the commercial premises, to maintain the sidewalk and to indemnify the landlord from any injury claims arising therefrom.

This type of lease-based indemnification agreement is enforceable under New York law (*Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412, 417 [2006]; *Hogeland v Sibley, Lindsay & Curr Co.*, 42 NY2d 153 [1977] [indemnity provisions in commercial leases are upheld unless they violate public policy]).

The Third-Party Complaint pleads causes of action for:

- **Contractual indemnification** – which is adequately supported by the lease;
- **Breach of contract** – for failure to comply with lease maintenance obligations;
- **Reimbursement** – of defense costs and liability exposure.

Each claim is predicated on a valid contract and supported by documentary and sworn proof.

III. Timeliness and Procedural Compliance

CPLR § 3215(c) requires that default judgment be sought within one year of the defendant's default. The Third-Party Summons and Complaint were served on February 26, 2025, and this motion was filed on June 25, 2025, well within the one-year window.

Moreover, the movants have met the requirements of CPLR § 3215(f), having submitted:

- The summons and complaint;
- Proof of service;
- An affidavit of the facts (by Mr. Kleinman);
- Proof of the default;
- The relief requested (an inquest on damages and indemnification).

The court finds that the Third-Party Plaintiffs have satisfied all the procedural and substantive prerequisites to entry of a default judgment. The default is not merely procedural—it

reflects a deliberate failure to respond by a commercial entity that remains active and was properly notified.

The lease terms are clear and unambiguous, and the indemnification obligation squarely covers the subject matter of the underlying personal injury claim. The affidavit of merit sets forth facts sufficient to sustain the pleaded claims. In such circumstances, no reasonable basis exists to deny the relief requested (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [2003]; *Gagen v Kipany Prods.*, 289 AD2d 844 [3d Dept 2001]).

Accordingly, it is:

ORDERED that the motion by Third-Party Plaintiffs BLDG 605 West 170th Street LLC and Newgold Equities Corp. for a default judgment against Third-Party Defendant Cignar Corp. d/b/a Broadway Vision Center pursuant to CPLR § 3215 is granted in its entirety; and it is further

ORDERED that judgment is hereby entered in favor of the Third-Party Plaintiffs and against Third-Party Defendant Cignar Corp. d/b/a Broadway Vision Center on the causes of action set forth in the Third-Party Complaint; and it is further

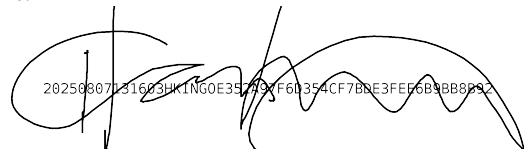
ORDERED that the Clerk of the Court is directed to enter said judgment in favor of the Third-Party Plaintiffs and against Third-Party Defendant Cignar Corp. d/b/a Broadway Vision Center on the causes of action set forth in the Third-Party Complaint; and it is further

ORDERED that the issue of damages, including any indemnifiable defense costs, shall be determined at an inquest to be scheduled by the court at the time of trial; and it is further

ORDERED that the Third-Party Plaintiffs shall serve a copy of this decision and order with notice of entry upon Cignar Corp. d/b/a Broadway Vision Center and file proof of service with NYSCEF.

This constitutes the decision and order of the court.

8/7/2025
DATE


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HASA A. KINGO, J.S.C.

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