

**Jara v Melmel LLC**

2025 NY Slip Op 32938(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 452940/2023

Judge: Leslie A. Stroth

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. LESLIE A. STROTH PART 12M

Justice

-----X

CONSUELO JARA, SHAWN RELAFORD, MAKUDE BAKAYOKO, ADELAIDE GONZALEZ, DAMIEN WALTERS, TERRANCE JONES, VINCENT PUCCIO, CARMELITA RATNA, ISAAC BENEZRA, HASAN MAHMUD, EUFEMIA CORTIJO, WHITNEY TOUSSAINT,

Plaintiff,

- v -

MELMEL LLC, 2069 REALTY LLC, 161-171 MORNINGSIDE LLC, GALIL MANAGEMENT LLC, DUFFERIN ASSOCIATES, LLC, KINGS THORN LLC, DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HOUSING DEVELOPMENT FUND CORPORATION, SUPERIOR REALTY GROUP LLC, ANUFA PROPERTIES LLC, SALVATORE PASSALACQUA, JOSEPH PASSALACQUA, AEF WOODSIDE LLC, MID-BRONX HOUSING DEVELOPMENT FUND CORPORATION, 1075 GERARD AVE. LLC, LISA BOVA-HIATT

Defendant.

-----X

INDEX NO. 452940/2023
MOTION DATE 05/12/2025, 05/12/2025
MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 225

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 187, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 223, 226

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs in this action are all tenants holding Emergency Housing Vouchers ("EHV") issued through the New York City Housing Authority's ("NYCHA") Section 8 program. This action arises from allegations by Plaintiffs that certain landlord defendants refused to cooperate with the voucher approval process, thereby violating New York City and New York State

Human Rights Laws. Plaintiffs seek to “lease in place,” using their vouchers to subsidize rent in their current apartments.

Plaintiffs allege that Landlord Defendants have failed or refused to complete the required steps, leaving Plaintiffs unable to activate their vouchers and at risk of eviction for nonpayment of rent that NYCHA would otherwise subsidize.

Plaintiffs reside in various apartments across New York City. Each Plaintiff received an EHV voucher between February and May 2023. Plaintiffs allege they provided their respective landlords or their attorneys with the necessary documentation to complete the voucher process, but that Defendants did not comply with completing the submission process for Plaintiffs to receive proper benefits.

Relevant to the instant motions, Plaintiff Damien Walters resides at 3525 Rochambeau Avenue, Apt. 1C, Bronx, NY 10467. NYCHA issued Mr. Walters an EHV voucher on March 20, 2023, with a payment standard of \$2,335, compared to his current rent of \$884.58. The building owner is Defendant Kings Thorn LLC. On April 12, 2023, Mr. Walters’s attorney emailed the PIN letter to Kings Thorn LLC’s counsel, who acknowledged receipt but provided no confirmation that the required documents had been submitted to NYCHA. Plaintiffs alleged that counsel for Mr. Walters sent multiple follow-up emails through September 2023, requesting a status update and offering assistance, but that despite these efforts NYCHA records show that no application was submitted on Mr. Walters’s behalf, and his voucher is set to expire on January 14, 2024.

Plaintiffs allege that Defendants’ refusal to process these vouchers, coupled with their pursuit of eviction proceedings for alleged nonpayment of rent, constitutes unlawful source-of-income discrimination in violation of the New York City Human Rights Law (Administrative

Code §§ 8-102, 8-107 et seq.) and the New York State Human Rights Law (Executive Law § 296).

In Motion Sequence 003, Plaintiffs Shawn Relaford and Hasan Mahmud move against Defendants 2069 Realty LLC and AEF Woodside LLC for default judgment pursuant to CPLR 3215(d) for failing to appear or otherwise respond to the Complaint, despite being duly served.

In Motion Sequence 004, Plaintiff Damien Walters moves for partial summary judgment against Defendant Kings Thorn LLC pursuant to CPLR 3212, seeking, *inter alia*, (1) a declaration granting Plaintiff's First and Second causes of action for alleged violations of the New York City and New York State Human Rights Laws and (2) a declaration that Plaintiff Walters's rent liability is limited to his Section 8 share of \$12 per month from May 2023 to the present; and (3) dismissal of Defendant King Thorn LLC's eighth through fourteenth affirmative defenses and its first through seventh counterclaims.

#### MOTION SEQUENCE 003 FOR DEFAULT

When a defendant fails to appear or answer, a plaintiff may seek a default judgment against that defendant (CPLR 3215 [a]). "On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing" (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011]).

Here, Plaintiff fails to attach an affidavit of merit or complaint verified by the Plaintiffs seeking default. A complaint verified by an attorney rather than the plaintiff is "insufficient to support entry of judgment pursuant to CPLR 3215" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "In the absence of either a verified complaint or an affidavit by the party, the entry

of judgment by default is erroneous” *Mullins v DiLorenzo*, 199 AD2d 218, 220 [1st Dept 1993]. As such, Plaintiffs have failed to supply any documentation of proof of facts constituting their claim, and as such, Plaintiffs application for default judgement is denied.

#### MOTION SEQUENCE 004 FOR PARTIAL SUMMARY JUDGMENT

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent’s claims and no disputed issues of fact, the opponent, in turn, is required to “lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest” (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

#### *Authentication and Admissibility*

Defendant contends that Plaintiff’s exhibits including emails, NYCHA inspection reports, and internal communications are inadmissible hearsay lacking proper authentication under CPLR 4518. Plaintiff relies on his own affidavit and counsel’s affirmation to introduce NYCHA records and correspondence. While Plaintiff’s affidavit is based on personal knowledge, many supporting documents, including NYCHA inspection letters and HAP-related records, are not accompanied by a business records foundation. Such defects, however, do not mandate wholesale rejection where other sworn statements supply a factual basis (*see Phillips v Joseph Kantor & Co.*, 31 NY2d 307, 310 [1972]). The Court considers Plaintiff’s sworn assertions

regarding notice, RFTA submission date, and access, while noting that the evidentiary deficiencies affect weight rather than admissibility at this stage.

*Statutory Framework and Alleged Source-of-Income Discrimination*

Both the NYCHRL (Admin. Code § 8-107[5][a][1]) and NYSHRL (Exec Law § 296[5][a][1]) prohibit refusing to rent, or discriminating in the terms of rental, based on lawful source of income, explicitly including Section 8 vouchers (Admin. Code § 8-102[25]; Exec Law § 292[36]). Courts have held that a landlord's failure to submit required paperwork or comply with program requirements can constitute unlawful discrimination (see *Tapia v Successful Mgmt. Corp.*, 79 AD3d 422 [1st Dept 2010]; *Rakhman v Alco Realty I, L.P.*, 81 AD3d 424 [1st Dept 2011]; *Short v Manhattan Apts., Inc.*, 916 F Supp 2d 375 [SDNY 2012]).

Here, it is undisputed that Plaintiff notified Defendant in April 2023 of his intent to use his EHV and provided the PIN letter necessary to initiate the Request for Tenancy Approval (RFTA). (NYSCEF Doc No. 159) It is further undisputed that Defendant did not submit the RFTA until December 18, 2023, eight months later, and that NYCHA ultimately approved the voucher in August 2024, with payments retroactive to July 12, 2024. (NYSCEF Doc No. 175)

Plaintiff argues that this eight-month delay and subsequent failure to cure HQS violations until July 2024 effectively denied him the use of his voucher and violated the NYCHRL and NYSHRL as a matter of law. Defendant counters that no statute or case imposes a strict timeframe for RFTA submission, that it did not refuse to participate in the program, and that delays were attributable to Plaintiff's chronic failure to provide access for repairs and the unsanitary condition of the apartment.

The Court finds that whether Defendant's delay amounted to a constructive refusal to accept Plaintiff's voucher involves questions of fact, particularly given Plaintiff's concession that

Defendant eventually submitted the RFTA and entered into a HAP contract. Unlike in *Rakhman*, where the landlord categorically refused to complete a mandatory form, Defendant here did complete the paperwork and ultimately enabled voucher use. Moreover, Plaintiff provides no caselaw as to the extent of a delay which would constitute a violation of the NYCHRL or NYSHRL. While undue delay may constitute discrimination in certain circumstances, the reasonableness of Defendant's delay, considering its allegations of access problems and Plaintiff's conduct, cannot be resolved by this Court on a motion for summary judgment.

#### *HQS Violations and Access Disputes*

To participate in Section 8, the unit must meet Housing Quality Standards (24 CFR § 982.405). Plaintiff asserts that Defendant failed to correct HQS violations despite multiple access opportunities, delaying approval until July 2024. Defendant maintains that it repeatedly sought access and that Plaintiff's own conduct including refusing or rescheduling court-ordered access dates caused the delay.

The record reflects extensive motion practice and stipulations in Housing Court concerning access, as well as multiple supervised access dates. (NYSCEF Doc Nos. 167-168, 205-207, 214-215, 217). It further reflects ongoing disputes regarding conditions, Plaintiff's failure to appear at hearings, and documented unsanitary conditions (NYSCEF Doc No. 212). These facts create a triable issue as to whether Defendant acted diligently to remedy HQS violations or whether delays were substantially attributable to Plaintiff. Again, these are issues of fact related to credibility and causation which preclude summary judgment in this instant motion.

#### *Constitutional Challenge*

The First Department has upheld the validity of the provisions of the NYSHRL and NYCHRL at issue of these provisions (*Tapia*, 79 AD3d 422 at 424). The Court of Appeals

similarly rejected similar arguments related to federal preemption or other constitutional challenges to the Section 8 program. (see *Rosario v Diagonal Realty, LLC*, 8 NY3d 755, 761 [2007]). Moreover, the Fourth Amendment claim is not squarely presented in the context of Plaintiff's motion, as Defendant voluntarily signed HAP contracts for multiple tenants, including Plaintiff Walters. Accordingly, Defendants constitutional challenge is without merit.

*Limiting Rent Liability*

Plaintiff Walters seeks a declaration that his rental liability since May 2023 is limited to \$12 per month, his calculated Section 8 share. Courts have granted such relief where a landlord's refusal to accept Section 8 benefits prevented timely subsidy approval (see *Kosoglyadov v 3130 Brighton Seventh, LLC*, 54 AD3d 822 [2d Dept 2008]; *Rakhman*, 81 AD3d 424 at 424). Here, there is an issue of material fact as to the cause of any delay, as Plaintiff alleges that it was squarely Defendant's conduct, whereas Defendant rebuts this argument with documentary evidence that Plaintiff was in part responsible for the delayed approval. Accordingly, declaratory relief on this issue is premature.

*Affirmative Defenses and Counterclaims*

Plaintiff also moves to strike Defendant's eighth through fourteenth affirmative defenses and first through seventh counterclaims. Given unresolved issues regarding causation, access, and compliance, as well as pending constitutional questions, the Court declines to strike these defenses and counterclaims at this stage.


Accordingly; it is hereby

ORDERED that Plaintiffs Shawn Relaford and Hasan Mahmud's motion for default judgement against Defendants 2069 Realty LLC and AEF Woodside LLC (Motion Sequence 003) is denied without prejudice to renew; and it is further

ORDERED that Plaintiff Damien Walters motion for Partial Summary Judgement is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

8/5/2025  
DATE

  
**HON. LESLIE A. STROTH**  
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"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT
				REFERENCE