

**Katz v New York City Hous. Preserv. & Dev.**

2025 NY Slip Op 34056(U)

October 22, 2025

Supreme Court, New York County

Docket Number: Index No. 100949/2024

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*

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CHAIM Y. KATZ, CHANA KATZ,  
  
Plaintiff,

**INDEX NO.** 100949/2024  
**MOTION DATE** 08/25/2025  
**MOTION SEQ. NO.** 004

- v -

NEW YORK CITY HOUSING PRESERVATION &  
DEVELOPMENT, NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION, SITE 5 RESIDENTIAL  
OWNER LLC, NRT NEW YORK LLC D/B/A CITI HABITATS,  
C & C APARTMENT MANAGEMENT LLC,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, plaintiffs Chaim Y. Katz (“Mr. Katz”) and Chana Katz (together, “Plaintiffs”) move pursuant to CPLR § 2221 for leave to reargue and to vacate this court’s decision dated August 18, 2025. Defendants the New York City Department of Housing Preservation and Development and the New York City Housing Development Corporation (together, the “City”) defendants Site 5 Residential Owner LLC and C&C Apartment Management LLC (together, the “Site 5 defendants”), and defendant NRT d/b/a Citi Habitats (“NRT”) oppose the motion. For the reasons set forth herein, the motion is denied.

**BACKGROUND**

In this action, Plaintiffs allege that defendants discriminated against them on the basis of family size and creed or religion in connection with their attempts to obtain housing through three different affordable housing lotteries in New York City (NYSCEF Doc No. 5, amended complaint). Plaintiffs commenced this action by filing a summons and complaint on August 8, 2024, and then filed an amended complaint on November 8, 2024 (NYSCEF Doc Nos. 1, 5).

On December 20, 2024, the City, Site 5 defendants, and NRT each filed motions to dismiss the amended complaint (Motion Seqs. 001, 002, 003). On January 30, 2025, the parties signed a stipulation that extended the Plaintiffs’ time to file responsive papers to February 28, 2025 (NYSCEF Doc No. 28). On February 26, 2025, the parties signed a second stipulation that further extended the time to oppose the motions to April 29, 2025 (NYSCEF Doc No. 32). Despite these two adjournments, Plaintiffs did file a response the motion, and all three motions were marked

submitted on May 2, 2025, as reflected on the court's eCourts case tracking website. On August 18, 2025, all three motions were granted and the complaint dismissed pursuant to an order and decision of this court (NYSCEF Doc Nos. 33-35).

Plaintiffs now move pursuant to CPLR § 2221 to reargue and vacate the August 18, 2025 order (NYSCEF Doc No. 38, notice of motion). In support of the motion, Mr. Katz attests that he sent an additional request for adjourn the motions to dismiss by email to the court on April 23, 2025, which was not memorialized in the August 18, 2025 decision (NYSCEF Doc No. 39, aff in support ¶ 3). Mr. Katz further represents that, at the time of the April 23, 2025 email, Plaintiffs were in contact with an attorney who expressed interest in, but ultimately could not, take the case (*id.* ¶ 4). Mr. Katz also attests that, while waiting for a response to his adjournment request, he “spent countless hours researching and drafting [an] amended complaint which addresses and streamlines many of the issues raised in the Defendants’ motions to dismiss,” as well as adding causes of action violation of the Equal Protection and Due Process Clauses of the United States and New York State Constitutions (*id.* ¶ 5). Finally, Mr. Katz attests that his wife and co-plaintiff, Chana Katz, is currently experiencing “an extremely difficult, high-risk pregnancy,” and was due to give birth in September 2025 (*id.* ¶ 6). Plaintiffs request leave to reargue the August 18, 2025 order, to vacate the August 18, 2025 order, and for leave to serve an amended complaint that adds causes of action for violation of the Equal Protection and Due Process Clauses of the United States and New York State Constitutions (NYSCEF Doc No. 44, proposed amended complaint). In a supplemental submission, Plaintiffs represent that, after filing their motion to reargue, they received responses to outstanding FOIL requests wherein the City represented that a diligent search did not locate any records, and, accordingly, the request was denied (NYSCEF Doc No. 47).

The City opposes the motion and argues that the court should deny Plaintiffs’ motion because they have not raised any matters of fact or law that the court overlooked or misapprehended, nor did they address the court’s holdings in their motion to reargue (NYSCEF Doc No. 51). The Site 5 defendants and NRT also separately oppose and join in the City’s arguments (NYSCEF Doc Nos. 52, 54). On reply, Plaintiffs reiterate that they did not intend to abandon the matter.

## DISCUSSION

Although Plaintiffs move pursuant to CPLR § 2221 to reargue the August 18, 2025 decision and order, the proper vehicle to challenge an order entered on default is a motion to vacate under CPLR § 5015 (a)(1) (*Ingram by Cole v Assn for Metroarea Autistic Child., Inc.*, 190 AD3d 458, 458 [1st Dept 2021], citing *Hutchinson Burger, Inc. v Bradshaw*, 149 AD3d 545, 545 [1st Dept 2017] [“The proper vehicle for defendant to challenge the October 2012 order, which was granted on her default, was a motion to vacate a default order under CPLR § 5015 (a) (1), and not a motion for renewal or reargument under CPLR 2221 (d) and (e)”]; *see also William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [“Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted”]). A motion with this posture may be treated as a motion to vacate pursuant to CPLR § 5015 (*Mehler v Jones*, 181 AD3d 535, 535 [1st Dept 2020]).

Under CPLR § 5015 (a), “[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct,” upon a showing of “excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry.” “A motion to vacate may be granted pursuant CPLR § 5015 where a party shows both an excusable default and a meritorious defense” (*Dong v Howe*, 219 AD3d 1219, 1219 [1st Dept 2023], citing *Port Auth. of NY & New Jersey v Guardian Serv. Indus., Inc.*, 165 AD3d 467, 467 [1st Dept 2018]).

Mr. Katz proffers that Plaintiffs failed to oppose the motions to dismiss because the court did not consider his emailed request for an additional time to oppose the motions. However, the request in question was not filed to the NYSCEF electronic filing system, as required by the Part 5 rules publicly available on the court’s website, nor did the other parties to the action express consent to the request.<sup>1</sup> Plaintiffs made no efforts to follow up with the court regarding the adjournment request, either before the motion return date or after the motion was marked fully submitted with no opposition on May 2, 2025, as reflected on the court’s eCourts case tracking website. Nor did Plaintiffs file opposition to the motion, despite Mr. Katz’s representation that he “spent countless hours” researching the issues raised and drafting a proposed amended complaint, and despite the initial two adjournments that extended the deadline for opposition over three months from the original return date, followed by an additional three months before the court issued its decision and order. Considering these factors, it is this court’s determination that Plaintiffs have not offered a reasonable excuse for their failure to oppose the motions (*see Dong v Howe*, 219 AD3d at 1219 [“A determination of what constitutes a reasonable excuse lies within the court’s discretion”]).

When a party moving to vacate a default fails to demonstrate a reasonable excuse for the default, the court need not consider whether the movant showed a meritorious defense (*Hereford Ins. Co. v. Interdependent Acupuncture PLLC*, 234 AD3d 410, 410 [1st Dept 2025] [“Since appellants’ proffered excuse for their defaults was not reasonable, the court did not need to consider whether they showed a potentially meritorious defense to the declaratory judgment action”]). Nevertheless, even if Plaintiffs demonstrated a reasonable excuse for the default, the motion must be denied because they did not demonstrate that they have a meritorious claim or make any attempt to address the merits of issues addressed in the August 18, 2025 decision and order (*Wollman v Seven Seas Union Sq. LLC*, 239 AD3d 558, 89 [1st Dept 2025] [“Even if plaintiff offered a reasonable excuse for her default, she failed to show that she has a meritorious claim”]; *see also Liu v Chang*, 227 AD3d 410, 410 [1st Dept 2024]).<sup>2</sup> Therefore, the motion is denied.

Accordingly, it is hereby

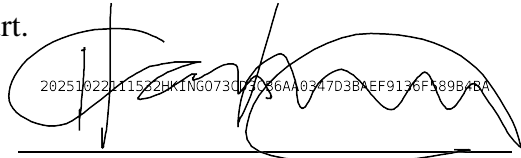
ORDERED that the motion to reargue is denied.

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<sup>1</sup> Notably, the adjournment could only have been granted by order of the court, regardless of whether all parties consented, because the motion was already more than 60 days past the original return date at the time of the request (*see* 22 NYCRR ¶ 202.8-a [c]; Part 5 rule number eight).

<sup>2</sup> Moreover, the motion also fails under the standard for a motion to reargue because it is not based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion (CPLR § 2221 [d]).

This constitutes the order and decision of the court.



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**HASA A. KINGO, J.S.C.**

10/22/2025  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: