

Mann v DeLaCruz

2025 NY Slip Op 34763(U)

December 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 529920/2022

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4th day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

AMAN MANN,

Plaintiff(s),

-against-

CHRISTOPHER DELACRUZ, 5 BORO GREEN SERVICES, LLC, ALAN GOLDMAN, SALEM TRUCK LEASING, INC. and SALEM TRUCKING CO., INC.,

Defendant(s).

DECISION & ORDER

Index No.: 529920/2022

Calendar No.: 30

Motion Seq.: 005

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers
Numbered**

Notice of Motion and Supporting Documentation.....	123-126
Affirmation and Supporting Documentation in Opposition	127-132
Reply Affirmation	133

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Introduction

This is an action for personal injuries arising out of an automobile accident on 10/2/2021 on North Broadway, at or near its intersection with North Marginal Road, Jericho, New York. Plaintiff has moved this Court for an order per CPLR § 2221 to reargue an order dated 5/15/2025 dismissing this action (MS 005).

The Underlying Motion and Decision

Plaintiff filed the note of issue on 12/10/24. Defendants, DeLaCruz, 5 Boro Green Services and Goldman (collectively “5 Boro”), filed a motion to strike the note of issue on

12/13/24 and extend their time to file a motion for summary judgment returnable in the Central [Discovery] Compliance Part. The branch of the motion seeking to strike the note of issue was denied as plaintiff provided the outstanding discovery. The branch of the motion seeking to extend defendants' time to move for summary judgment under *Brill v City of New York*, 2 NY3d 648 [2004] was denied with leave to renew before the IAS Judge (NYSCEF 101).

The Salem Truck defendants filed a motion for summary judgment on the issue of “serious injury” under Article 51 of the Insurance Law on 1/31/25 (MS#4). 5 Boro also filed a motion for summary judgment on this issue on 2/21/25 (MS#5). However, the notice of motion did not include a request to extend their time to move for summary judgment. On 3/3/25, plaintiff e-filed a stipulation signed by all parties discontinuing this action as against the Salem Truck defendants only. The stipulation also withdrew Salem’s motion for summary judgment. (*see* NYSCEF 100). In opposition to 5 Boro’s motion, plaintiff argued that the motion was untimely because it was filed 13 days beyond the 60-day deadline to do so. Therefore, since Salem’s motion had been withdrawn, a timely filed motion was not pending before this Court. Moreover, since 5 Boro relied on the exhibits annexed to Salem’s withdrawn motion, there was no evidence in the record to support 5 Boro’s motion. In the alternative, it was argued that if the Court were to consider the alleged untimely motion, plaintiff had established that she has sustained a serious injury as defined by the Insurance Law.

By an order dated 5/15/2025, the Court considered 5 Boro’s motion (*Whitehead v. City of New York*, 79 A.D.3d 858, 860 [2d Dept. 2010]; *Wernicki v. Knipper*, 119 AD3d 775, 777 [2d Dept. 2014], *citing* CPLR 3212[a]; and *see generally, National Enterprises Inc. v Certilman*, 234 AD2d 527 [2d Dept. 1996]), and dismissed this action based on plaintiff’s failure to meet the

threshold requirements of Insurance Law § 5102 [d] (*Gonzalez v Cohn*, 224 D3d 667, 667-668 [2d Dept 2024]).

Analysis

It is well established a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or the law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept. 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept. 2015]). Such a motion “shall not include any matters of fact not offered on the prior motion” (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221 [d] [2]). Such a motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

Plaintiff’s motion for leave to reargue the 5/15/2025 order per CPLR § 2221 is granted, and upon reargument, the Court adheres to its initial determination dismissing this action.

The Court has considered the plaintiff’s remaining arguments and finds them to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for an order per CPLR § 2221 to reargue the Order dated 5/15/2025 is granted, and upon reargument, the Court adheres to its initial determination dismissing this action in its entirety, and it is further

ORDERED that the Clerk shall enter judgment dismissing this action.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 12/4/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____