

**Vivanco v 3085 31st Prop. LLC**

2025 NY Slip Op 34879(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 502165/2023

Judge: Devin P. 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 Kings**

**Index Number** 502165/2023  
**Seqs.** 004

Part LL1M

\_\_\_\_\_  
MILTON VIVANCO,

Plaintiff,

**DECISION/ORDER**

against

3085 31ST PROPERTY LLC AND GRAVITY CONSTRUCTION  
US INC.,

Defendants.  
\_\_\_\_\_

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 15, 24, 92, 93, 96, 101–107, 108–118. Reply affirmations in further support are not contemplated by the CPLR, and therefore have not been considered here.

Upon defendants 3085 31st Property LLC (Owner) and Gravity Construction US Inc. (Gravity)’s motion to vacate the default judgment and decision after inquest of Referee Miriam Sunshine and to stay enforcement of the judgment, and upon the prior order of this court dated May 21, 2025 directing Mr. Lin to comply with the subpoena on or before July 24, 2025 and Mr. Lin’s apparent failure to do so, motion sequence 004 is decided as follows:

**Introduction & Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on October 28, 2022, when he fell approximately three stories onto a sidewalk shed while working at a construction site. Plaintiff commenced this action on January 20, 2023, and served defendants via the Secretary of State pursuant to BLC § 306.

Defendant Gravity sub-contracted Galaxy Millwork (Galaxy) to perform work at the premises located at 30-85 31st Street, Queens, NY. Galaxy was obligated to purchase an insurance policy and to name the Owner and Gravity as additional insureds. The certificate of insurance provided by defendants indicates that Galaxy did procure such a policy from Travelers Insurance Company. Eddie (or Bo) Lin, the president of Gravity and of the Owner, provided an affidavit asserting the following: Upon receipt of the complaint, Mr. Lin forward the complaint to Samson Law of CL Insurance Agency Inc. (CL), Galaxy's insurance broker. Mr. Law assured Mr. Lin that the defendants were additional insureds on the Traveler's policy, that the complaint would be forwarded to Travelers, and that Travelers would appoint counsel for defendants (Lin aff. at ¶ 17). Mr. Lin continued to contact CL and was told that Travelers was investigating the claim and would provide a defense.

In May 2023, Mr. Lin contacted Kenny Huang of Sky Capital Group Inc., the insurance broker for Gravity. Mr. Huang indicated that he would contact Allied World Surplus Lines Insurance Company (Allied World). Rockville Risk Management (Rockville), the third-party administrator for Allied World, sent a letter to Travelers demanding defense and indemnity in the instant lawsuit for Gravity and the Owner. Travelers denied coverage to Gravity by letter on June 9, 2023 and, though silent as to the Owner, has not tendered a defense to the Owner to date.

On August 29, 2023, plaintiff moved for default judgment against defendants; that motion was granted on October 17, 2023. An inquest was held on November 19, 2024, where defendants did not appear. Referee Miriam Sunshine issued a decision after inquest awarding the plaintiff \$1,750,000. On March 14, 2025, Gravity commenced a plenary action in Queens County Supreme Court against Galaxy and Travelers, indexed as 707523/2025.

### Analysis


Defendants seek relief for the default under both CPLR 317 and CPLR 5015. Both statutes require the movant to demonstrate a potentially meritorious defense as a necessary condition to vacating the default (*Benchmark Farm, Inc. v Red Horse Farm, LLC*, 162 AD3d 836 [2018]). Defendants have failed to show a potentially meritorious defense; therefore, their motion for vacatur must be denied under either statute. Mr. Lin's affidavit contains the conclusory assertion, devoid of any evidentiary basis, that plaintiff's approximately three-story fall onto a sidewalk shed may have been caused by plaintiff's recalcitrance. Mr. Lin does not state with any particularity how the plaintiff was allegedly recalcitrant, let alone adduce evidence sufficient to make out a legally cognizable affirmative defense to plaintiff's Labor Law § 240 (1) claim.

Even if defendants' purported defense were accepted for argument's sake, they have failed to meet the other necessary conditions for vacatur under either statute. Under CPLR 317, Mr. Lin admitted that he is president of both defendant corporations (Lin aff. at ¶¶ 1–2) and that he received a copy of the summons and complaint from the Secretary of State. Therefore, any contentions about Gravity's address are irrelevant—a principal of the corporation had actual notice of the lawsuit by receiving the summons and complaint, and the corporate defendant subsequently defaulted. Under CPLR 5015, the defendants have failed to demonstrate a reasonable excuse for their default. The disclaimer of coverage approximately two years prior to defendants' efforts to interpose an answer is not a reasonable excuse for default (*see Gershman v Ahmad*, 131 AD3d 1104 [2d Dept 2015]), particularly where, as here, defendants had actual notice of the lawsuit from its inception and were aware that failure to answer would result in a default.

**Conclusion**

Defendant's motion is denied. In light of Mr. Lin's ongoing failure to comply with prior court orders directing his post-judgment deposition, a contempt hearing is scheduled for January 5, 2026 at 11:00am, unless Mr. Lin is deposed before that date.

December 11, 2025  
**DATE**

  
**DEVIN P. COHEN**  
Justice of the Supreme Court