

**Estate of Wilson v Northern Manhattan Nursing  
Home, Inc.**

2025 NY Slip Op 34983(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 156894/2024

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M**

*Justice*

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THE ESTATE OF FLORINE WILSON, by her Administrator,  
CHARLES WILSON,

Plaintiff,

INDEX NO. 156894/2024

MOTION DATE 10/16/2025

MOTION SEQ. NO. 002

- v -

NORTHERN MANHATTAN NURSING HOME, INC., doing  
business as NORTHERN MANHATTAN REHABILITATION  
AND NURSING CENTER, ABC CORPORATION, and  
ABC PARTNERSHIP (These names being fictitious as  
their true identities are presently unknown),

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30,  
37, 38

were read on this motion to/for RENEWAL.

This is an action to recover damages, inter alia, for medical malpractice based on  
alleged departures from good and accepted practice and pursuant to Public Health Law § 2801-  
d for purported violations of statutes and regulations governing nursing homes. The defendant  
Northern Manhattan Nursing Home, Inc., doing business as Northern Manhattan Rehabilitation  
and Nursing Center (Northern Manhattan), moves pursuant to CPLR 2221(e) for leave to renew  
its prior motion pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted  
against it, which had been denied as untimely in an order dated June 9, 2025 (MOT SEQ 001),  
and thereupon to grant that motion. The plaintiff opposes this motion. This motion is denied.

CPLR 2221(e) provides that

“A motion for leave to renew:

“1. shall be identified specifically as such;

“2. shall be based upon new facts not offered on the prior motion that would  
change the prior determination or shall demonstrate that there has been a  
change in the law that would change the prior determination; and

“3. shall contain reasonable justification for the failure to present such facts on the prior motion”

(see *Melcher v Apollo Med. Fund Mgt., LLC*, 105 AD3d 15, 23 [1st Dept 2013]; *American Audio Serv. Bur. Inc. v. AT & T Corp.*, 33 AD3d 473, 476 [1st Dept 2006]). In the first instance, Northern Manhattan presents no new facts that had not been presented to the court in connection with its initial motion, and points to no change of law that would require a different outcome. Rather, it argues that this court misapprehended, overlooked, or misapplied the provision of CPLR 3211(e) which recites that a “motion based upon a ground specified in paragraph . . . seven . . . of subdivision (a) of this rule may be made at any *subsequent* time or in a later pleading, if one is permitted” (emphasis added), that is, at any time subsequent to the service of a responsive pleading.

Hence, its motion is not one to renew, but one to reargue, “because it was not ‘based upon new facts not offered on the prior motion’ and did not ‘contain reasonable justification for the failure to present such facts on the prior motion’” (*Arena v Shaw*, 179 AD3d 415, 415 [1st Dept 2020], quoting CPLR 2221[e]), but instead was based upon this court’s purported misapprehension of existing law (see *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]; *O’Brien v Kaplan*, 238 AD3d 609, 610 [1st Dept 2025]; *Matter of Setters v Al Props. & Devs. (USA) Corp.*, 139 AD3d 492, 4492 [1st Dept 2016]; *Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]). Leave to renew must therefore be denied on that ground.

Northern Manhattan’s reargument motion is itself untimely in any event. A motion for leave to reargue must be made by serving a notice of motion or signed order to show cause (see CPLR 2211) within 30 days of the service upon the party seeking reargument of a copy of the initial order, with notice of its entry (see CPLR 3211[d][3]). On July 14, 2025, the plaintiff served Northern Manhattan with a copy of the order deciding Mot Seq 001, with notice of entry, by uploading those documents to the New York State Court Electronic Filing system. Northern

Manhattan thus had until August 13, 2025 within which to make the instant motion. Inasmuch as it waited until September 16, 2025 to do so, the instant motion must be denied as untimely.

Even were the court to entertain this motion, it would be constrained to deny it. Northern Manhattan evinces a fundamental understanding of CPLR 3211(e). The provision upon which it relies presumes that it had timely appeared in the action or answered the complaint prior to moving pursuant to CPLR 3211(a)(7). A defendant may either make a timely appearance within 20 days after it has been served with the summons and complaint by personal delivery, may make a timely pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(7) by serving its motion papers within 20 days after it has been served with the summons and complaint, or may timely serve an answer within 20 days after it has been served with the summons and complaint. If, rather than making a pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(7), it elects to appear or answer in a timely manner, it may *subsequently* move to dismiss the complaint on that ground or raise it in a later pleading, if one is permitted, for instance, in an answer to an amended complaint. “Although a defendant may make a motion to dismiss the complaint for failing to state a cause of action ‘at any subsequent time [*referring to after service of the responsive pleading*] or in a later pleading, that does not absolve the defendant's obligation to file a responsive pleading within the time required” (*Torres v PMC Constr. Co.*, 2019 NY Slip Op 34637[U], \*3, 2019 NY Misc LEXIS 24313, \*4 [Sup Ct, Rockland County, Sep. 13, 2019] [emphasis added]).

This is in contradistinction to a motion pursuant to, for instance, CPLR 3211(a)(5), based on the statute of limitations, which is untimely if made subsequent to the service of an answer; in connection with that affirmative defense, as well as other defenses identified in that paragraph, if a defendant has preserved the defense by raising it in its answer, it may move pursuant to CPLR 3212 for summary judgment on that ground subsequent to serving the answer, but a CPLR 3211(a)(5) motion will not lie (see *Molina v Mount Sinai Morningside Hosp.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2025 NY Slip Op 06815, \*1 [1st Dept, Dec. 9, 2025]; (*Lusitano Enters., Inc. v*

*Horton Bros., Inc.*, 2018 NY Slip Op 32011[U], \*2-3, 2018 NY Misc LEXIS 3587, \*4 [Sup Ct, Suffolk County, Aug. 14, 2018]; *see also Castro v Fraser*, 2022 NY Slip Op 30903[U], \*5, 2022 NY Misc LEXIS 1368, \*7 [Sup Ct, N.Y. County, Mar. 15, 2022] [Kelley, J.]; *Higgins v Goyer*, 2018 NY Slip Op 33520[U], \*2, 2018 NY Misc LEXIS 9607, \*3 [Sup Ct, Rensselaer County, Nov. 1, 2018]).

Here, however, Northern Manhattan was in default when it made its initial motion on September 23, 2024, since it had neither timely answered nor appeared in the action as of that date. Thus, Northern Manhattan is not absolved from its obligation either to serve a responsive pleading within the time required by the CPLR, or making its initial motion on or before that date (see *Torres v PMC Constr. Co.*, 2019 NY Slip Op 34637[U], \*3, 2019 NY Misc LEXIS 24313, \*4). If its interpretation were accepted, a defendant could simply decline to answer, thus delaying discovery, and spring a CPLR 3211(a)(7) motion on the plaintiff years later.

Although the court expresses no opinion as to whether the plaintiff is entitled to enter a default judgment on the issue of liability against Northern Manhattan, it notes that, in connection with its renewal motion, Northern Manhattan made no attempt to vacate its default in answering or appearing by seeking to demonstrate both a reasonable excuse for its default or a potentially meritorious defense to the action.

In light of the foregoing, it is,

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.



JOHN J. KELLEY, J.S.C.

<u>12/23/2025</u> DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE