

**Matter of Mercedes-Benz Fin. Servs. USA LLC v
Alexs Auto Body 1 Inc.**

2025 NY Slip Op 35575(U)

February 7, 2025

Supreme Court, Albany County

Docket Number: Index No. 904626-24

Judge: Thomas Marcelle

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STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

In the Matter of

MERCEDES-BENZ FINANCIAL SERVICES USA LLC,
And MERCEDES-BENZ VEHICLE TRUST

Petitioner

DECISION AND ORDER

-against-

Index No. 904626-24

ALEXS AUTO BODY 1 INC.,
and THE NEW YORK STATE DEPARTMENT
OF MOTOR VEHICLES,

Respondents.

Thomas Marcelle, J.

Respondent Alexs Auto Body 1 Inc. is represented by Sage Legal LLC (Emanuel Kataev, Esq.). Mr. Kataev has made a request for an adjournment of this matter and, in support of his request, provides an affirmation stating he is “actually engaged” in another proceeding on the same date, which conflicts with the oral argument scheduled in this case on February 11, 2025. The court determines counsel’s request.

First, a recitation of the relevant procedural history. Petitioner commenced this matter by order to show cause signed by the court on May 17, 2024. The order to show cause, among other things, directed respondent to release the subject vehicle, a 2022 Mercedes, to petitioner upon petitioner’s filing of a bond in the amount of \$40,000. According to petitioner, petitioner filed the bond, but respondent did not release the vehicle. Regardless, the court scheduled oral argument on petitioner’s petition for July 17, 2024 at 10:30 a.m.—the court had scheduled the argument date two months prior in May.

Petitioner appeared for argument on July 17, but respondent did not. Petitioner, who was also appearing in court on other matters that day, conveyed to the court that respondent's counsel Mr. Kataev had emailed petitioner's counsel early that morning asking for an adjournment of the matter. The court granted the adjournment, on consent of petitioner, even though Mr. Kataev had yet to appear in the case and had not directly made the request of the court. The court thus rescheduled argument for August 7 at 10:00 a.m.

At the August 7 appearance, petitioner appeared but respondent, again, did not and still had not answered the petition. Respondent's counsel, further, had not filed any notice of appearance either or otherwise directly informed the court that he was representing respondent. As a consequence of respondent's failure to appear and default, the court issued an order and judgment signed on August 12, 2024, which nullified respondent's garage lien, ordered the vehicle to be released to petitioner, and deemed petitioner's plenary claims preserved.

On November 1, 2024, with still no appearance by respondent, petitioner moved on its plenary claims and the court scheduled argument for December 12 at 10:30 a.m. On December 5, respondent finally appeared through counsel Mr. Kataev. At this time, Mr. Kataev requested a 60 day adjournment for the purposes of discussing settlement with petitioner or otherwise to file opposition papers. The court granted the adjournment request, setting a deadline of January 31 for respondent to submit any opposition papers, with argument to proceed on February 11, 2025 at 11:00 a.m. (NYSCEF Dkt. Nos. 26-28).

As of February 4, respondent had not filed any opposition papers or advised the court regarding the status of settlement discussions, so the court requested respondent to provide a letter of explanation. On February 6, Mr. Kataev filed the requested letter asking for a 30 day adjournment of the matter. Counsel stated that he needed the adjournment because "he has not

been able to schedule a meeting” with his client and, anyways, he has another matter scheduled on the same date in Suffolk County Supreme Court and is flying out of state on February 12 to boot. Petitioner filed a responsive letter objecting to the adjournment request noting, among other things, that respondent remains in violation of two court orders because it still had not released the subject vehicle to petitioner. The court then initially denied respondent’s adjournment request.

In response to the court’s denial of the adjournment request, respondent’s counsel filed an “Affirmation of Actual Engagement” and reasserted his request for an adjournment. In his affirmation, counsel identified the Suffolk County Supreme Court matter, *AA MEDICAL P.C. v. ERICA MENDEZ*, 616215/2021—a civil defamation case. Counsel states in his affirmation that the Suffolk County matter is calendared for an in-person “compliance conference” on February 11 at 9:30 a.m. Mr. Kataev informs the court that the Suffolk County Supreme Court order that scheduled the compliance conference was issued on January 17, 2025.

Now, the Suffolk County Supreme Court case conference was, according to respondent’s counsel, scheduled well after the time that oral argument was scheduled in this case—over a month later. This fact ordinarily would give the oral argument in this case precedence: “where an attorney has conflicting engagements, such attorney must proceed ... in the particular matter first scheduled for the date on which the conflict arises” (NYCRR 22 § 125.1 [d]). There is no other basis the court can discern that would give the Suffolk County matter compliance conference precedence over this oral argument—there is no “statutory preference” that is given

to the Suffolk County case, nor do any possible “exceptional circumstances” apply to the Suffolk County matter, at least respondent’s counsel mentions nothing that would qualify (*see id.*).¹

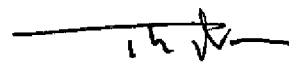
For these reasons, the court is of the opinion that the oral argument scheduled in this case takes precedence over the compliance conference scheduled in the Suffolk County Supreme Court matter.²

Therefore, it is

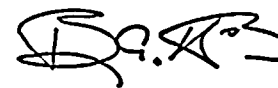
ORDERED, that respondent’s request for adjournment of the oral argument scheduled for February 11, 2025 at 11:00 a.m. is denied—the oral argument will proceed as scheduled, with in-person appearances required.

ENTER

Dated: February 7, 2025
Albany, New York



Thomas Marcelle, J.S.C.



02/07/2025

¹ “Exceptional circumstances” only apply to trials, hearings and appellate arguments (see 22 NYCRR § 125.1 [d] [1]-[4]).

² As a final note, Mr. Kataev is the only attorney of record representing respondent in this case. However, Mr. Kataev’s client in the Suffolk County case appears, according to the NYSCEF docket, to have multiple attorneys of record representing it, with Mr. Kataev being only one of the attorneys.