

73 Cooper LLC v Ketner

2026 NY Slip Op 30080(U)

January 8, 2026

Supreme Court, Kings County

Docket Number: Index No. 530113/2023

Judge: Kerry J. Ward

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of January, 2026.

P R E S E N T:

HON. KERRY J. WARD, A.J.S.C.

73 COOPER LLC,

DECISION/ORDER

Plaintiff,

Index No.: 530113/2023

-against-

Mot. Seq(s): 5, 6

ASHLEY KETNER a/k/a ASHLEY NICOLE KETNER,

Defendant.

Defendant moves (mot. seq. 5) pursuant to CPLR 2221(d) for leave to renew and/or reargue their prior cross-motion for summary judgment.

Plaintiff moves (mot. seq. 6) for an Order, (1) denying Defendant’s motion to reargue; (2) deeming Plaintiff’s Reply to Defendant’s counterclaims, filed February 9, 2024, accepted *nunc pro tunc* or, alternatively, granting leave to serve it late; (3) granting Plaintiff leave to reargue their prior motion for summary judgment limited to alleged overlooked facts or controlling law; (4) deeming Defendant’s counterclaims abandoned pursuant to CPLR 3215(c) and *Bazile v. Saleh*, 190 A.D.3d 811 (2d Dept 2021); and (5) compelling Defendant to provide full responses to Plaintiff’s September 12, 2025 discovery demands.

The motions have been fully submitted and considered on the papers. Oral argument was held on December 8, 2025.

Background and Procedural History

This action arises from a dispute concerning Defendant’s tenancy at the premises owned by Plaintiff, including allegations related to habitability, the legality of the cellar space, and Plaintiff’s entitlement to rent and attorney’s fees. Plaintiff initiated the action asserting substantial rent arrears and additional rent pursuant to a written lease agreement. Defendant countered that the premises was illegal for residential habitation, lacked a valid certificate of occupancy throughout her tenancy,

had no or insufficient heat, included a shared meter condition, and was advertised as a four-bedroom, three-bath apartment in violation of the certificate of occupancy. Defendant asserted that Plaintiff was therefore precluded from collecting rent for the duration of the tenancy and from recovering attorney's fees.

Plaintiff moved for summary judgment, and Defendant cross-moved for summary judgment dismissing the action. By Decision dated July 28, 2025, the Court denied both motions, citing outstanding triable issues of fact. Defendant now seeks leave to reargue their prior cross-motion, while Plaintiff separately moves to reargue its own prior motion and seeks additional relief relating to its late Reply, Defendant's counterclaims, and outstanding discovery.

Applicable Law and Analysis

CPLR 2221(d)

CPLR 2221(d) governs motions for leave to reargue, which must be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion. "While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*Ahmed v Pannone*, 116 AD3d 802 [2d Dept 2014]; CPLR 2221).

With regard to Defendant's Motion Sequence 5, Defendant argues that the Court misapprehended certain facts and law in denying her initial summary judgment motion, asserting that the documentary evidence conclusively establishes that Plaintiff marketed the premises as a four-bedroom, three-bath apartment including the cellar, in violation of the certificate of occupancy. Defendant further contends that the Court's conclusion regarding unresolved material factual questions was erroneous. In support, Defendant submits a screenshot from her Nooklyn.com account reflecting the listing for the premises, which was not previously provided to the Court.

Defendant's motion fails to satisfy the requirements of CPLR 2221(d). She identifies no controlling law that was overlooked, nor any fact previously presented that the Court misapprehended. The realty listing, although newly produced, is not a newly discovered fact for purposes of reargument, and the arguments based upon it merely reiterate those presented in the initial summary judgment motion. As no misapprehension of law or fact has been established, leave to reargue is unwarranted. Defendant motion is denied in its entirety.

Within Plaintiff's Motion Sequence 6, Plaintiff requests that Defendant's motion to reargue be denied. As detailed above, Defendant's motion to reargue is denied as a matter of law.

Plaintiff's request for leave to reargue its own prior summary judgment motion is also denied. Plaintiff identifies no material facts or controlling authority that the Court overlooked or misapprehended. Its submissions restate prior arguments previously considered and rejected.

CPLR 3012(d)

CPLR 3012(d) authorizes the Court to extend time to plead or to compel acceptance of an untimely pleading upon a showing of a reasonable excuse for the delay and a demonstration of potential merit (*see Yuxi Li v. Caruso*, 161 A.D.3d 1132 92d Dept 2018]). The determination of what constitutes a reasonable excuse for delay or default, as required to compel plaintiff to accept a late Answer, lies within the court's discretion (*Id.*).

The second branch of Plaintiff's motion seeks to have its untimely Reply to Defendant's counterclaims accepted *nunc pro tunc* or, in the alternative, to be granted leave to serve the pleading late. Plaintiff has provided no reasonable excuse for its nearly three-month delay, as required by CPLR 3012(d). The absence of any justification precludes the Court from exercising its discretion to permit the late pleading. This request is therefore denied.

CPLR 3215(c)

With respect to counterclaims, CPLR 3215(c) provides that if a plaintiff fails to take proceedings for the entry of judgment within one year after a defendant's default in pleading, the Court shall dismiss the claim as abandoned unless sufficient cause is shown why the pleadings should not be dismissed. The Second Department has held that CPLR 3215(c) applies equally to counterclaims and that dismissal is not discretionary, but mandatory where no timely proceedings are taken and no reasonable excuse is offered (*see Chase Home Fin., LLC v. Dasuja*, 204 A.D.3d 638 [2d Dept 2022]; *see also Bazile v. Saleh*, 190 A.D.3d 811 [2d Dept 2021]; *Giglio v. NTIMP, Inc.*, 86 A.D.3d 301 [2d Dept 2011]).

Plaintiff's request to deem Defendant's counterclaims abandoned under CPLR 3215(c) is granted. Defendant did not seek a default judgment against Plaintiff within one year after Plaintiff's default in replying to the counterclaims and has offered no excuse whatsoever for this failure. In opposition, Defendant relies on *HSBC Bank USA v Hasis* (154 AD3d 832 [2d Dept, 2017]) and *US Bank Nat. Ass'n v. Dorestant*, (131 AD3d 467 [2d Dept. 2015]), for the proposition that "[i]t is not necessary for a plaintiff to specifically seek the entry of a judgment within one year of the default in order to avoid dismissal based on abandonment, i.e., failure to take proceedings for entry of judgment within one year after a default; rather, as long as proceedings are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the case should not

be subject to dismissal.” However, as clarified by the Second Department, the “proceedings” contemplated by this standard consist of affirmative steps toward obtaining a default judgment. Specifically, the Second Department has held that a plaintiff satisfies CPLR 3215(c) by timely taking “the preliminary step toward obtaining a default judgment of foreclosure and sale by moving for an order of reference” to establish that it “initiated proceedings for entry of a judgment within one year of the default” for the purpose of satisfying CPLR 3215(c)” (*Wells Fargo Bank, N.A. v Mayen*, 155 AD3d 811, 812 [2d Dept 2017]; see also *HSBC Bank USA, Nat. Ass'n v Traore*, 139 AD3d 1009 [2d Dept 2016]; *US Bank Nat. Ass'n v. Dorestant*, 131 AD3d 467 [2d Dept. 2015]; *Klein v St. Cyprian Properties, Inc.*, 100 AD3d 711 [2d Dept 2012]). In the present action, Defendant failed to undertake any such proceedings as defined by the Second Department; thus, their counterclaims are subject to dismissal.

Pursuant to numerous Second Department holdings, dismissal is not discretionary, but mandatory in the absence of a reasonable excuse or timely proceedings. As no such showing has been made, the counterclaims are deemed abandoned and are dismissed pursuant to CPLR 3215(c).

Plaintiff’s request to compel responses to its September 12, 2025 discovery demands, pursuant to CPLR 3101 and 3124, is respectfully referred to the Central Compliance Part (CCP) for determination.

For the reasons stated above, Defendant’s motion for leave to reargue their prior motion for summary judgment (mot. seq. 5) is denied. Plaintiff’s motion (mot. seq. 6) is granted solely to the extent that Defendant’s counterclaims are dismissed as abandoned under CPLR 3215(c). Plaintiff’s remaining requests, including denial of Defendant’s motion, acceptance of Plaintiff’s late Reply, and leave to reargue, are denied. Plaintiff’s request to compel responses to its discovery demands is respectfully referred to the Central Compliance Part (CCP) for determination.

This constitutes the Decision and Order of the Court.

ENTER:



HON. KERRY J. WARD, A.J.S.C.

Hon. Kerry J. Ward, A.J.S.C.