

Miller v Sklar
2026 NY Slip Op 30191(U)
January 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 537755/2022
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of January, 2026.

P R E S E N T :

HON. WAVNY TOUSSAINT,
Justice.

YASMIN MILLER,

Plaintiff,

-against-

ARI SKLAR, VINCENT WU, MEEWOAN WONG,
NELSON LOPEZ, AND KEVIN CARABELLO,

Defendants.

Index No.: 537755/2022

MS #2
DECISION AND
ORDER

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered

68-74

79-86

98-99

Defendant Kevin Caraballo i/s/h/a Kevin Carabello (“Carabello” or “defendant”) moves (Seq. 02) for an order, pursuant to CPLR § 3215[c], dismissing the complaint for lack of *in personam jurisdiction*. Plaintiff opposes the motion.

Background and Relevant Procedural History

This is a personal-injury action arising from a September 10, 2021 multi-vehicle accident that occurred on the southbound FDR Drive in Manhattan, NY. Plaintiff alleges

her vehicle was rear-ended by the vehicle operated by Carabello, following a chain of multiple, preceding collisions between the vehicles of the other defendants.

Insofar as relevant to the within motion, the record indicates defendant was served with the summons and complaint, via the Secretary of State, as of January 6, 2023.¹ Defendant interposed a late answer as of February 13, 2025, which was accepted by plaintiff.² The answer asserted seven affirmative defenses (including lack of personal jurisdiction) and set forth a crossclaim for contribution and/or indemnification against the co-defendants. Defendant also served a Demand for Bill of Particulars and a Notice for Discovery and Inspection.³

On June 10, 2025, plaintiff filed a Response to Combined Demands of Defendants and served a Notice of Medical Exchange, Combined Demands and a Demand for Bill of Particulars to Affirmative Defenses, directed to defendant.⁴ On June 11, 2025, defendant's counsel sent a letter to plaintiff's counsel acknowledging receipt of plaintiff's Bill of Particulars and certain discovery responses, including certain HIPPA authorizations.⁵ Among other things, defendant's counsel also referenced certain "unsatisfactory" responses in plaintiff's Bill of Particulars, "defective" HIPPA authorizations and, while denying service of the complaint, asserted the service issue was moot as plaintiff did not timely move for default. Accordingly, counsel included a Stipulation of Discontinuance

¹ See NYSCEF Doc. No. 6. Vehicle and Traffic Law § 253, provides a method for service on a non-resident of the State of New York who is sued on a cause of action arising out of an accident or collision in which s/he is involved while operating a motor vehicle in New York State.

² See NYSCEF Doc. No. 52.

³ See NYSCEF Doc. Nos. 53 and 54.

⁴ See NYSCEF Doc. Nos. 59, 60, 61 and 62.

⁵ "HIPPA" is the acronym for the Health Insurance Portability and Accountability Act of 1996.

and requested execution of same under threat of a motion to dismiss pursuant to CPLR § 3215[c].⁶

A follow-up letter was sent by defendant's counsel on July 17, 2025, addressing the previously raised discovery matters and referencing attempts "to coordinate dates for the deposition of several co-defendants", among other things.⁷ Thereafter, defendant filed the within motion on August 19, 2025, seeking dismissal of the complaint for plaintiff's failure to seek defendants' default within one-year after the complaint was served and for plaintiff's failure to state with sufficient cause why the complaint should not be dismissed, upon such failure.

Discussion

CPLR § 3215[c] provides as follows:

(c) Default not entered within one year. If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed. A motion by the defendant under this subdivision does not constitute an appearance in the action.

Here, defendant's submission of an answer, discovery demands, and a demand for a Bill of Particulars; followed by engagement with plaintiff's counsel regarding the sufficiency of plaintiff's responses thereto, in lieu of moving to dismiss before these active indications of litigation, waived defendant's right to seek dismissal on the motion (*Deutsche Bank Natl. Trust Co. v. Garriques*, 235 AD3d 620, 621 [2d Dept 2025]; *see also*

⁶ See NYSCEF Doc. No. 73.

⁷ *Id.*, see also NYSCEF Doc. No. 99.

OneWest Bank, FSB v Villafana, 231 AD3d 845, 848 [2d Dept 2024]; *Bank of Am., N.A. v Carapella*, 218 AD3d 631, 633 [2d Dept 2023]).

Having waived the right to seek dismissal, the prevailing “sufficient cause” showing normally required of plaintiff under CPLR § 3215[c], is also waived. As the Second Department long ago instructed in *Myers v. Slutsky*, 139 AD2d 709, 710 [2d Dept 1988]: “The service of an answer and demand by a defendant, without taking advantage of the provisions of CPLR 3215(c), constitutes a waiver of the *benefits* of that section, just as a plaintiff’s acceptance of an answer constitutes a waiver of a defendant’s default” (emphasis supplied); *see also Bank of New York Mellon v Gaston*, 241 AD3d 1242, 1247 [2d Dept 2025]). Ordinarily CPLR § 3215 [c] is utilized in actions where the defendant has not served an answer or taken any other steps which may be viewed as a formal or informal appearance (*Meyers*, 139 AD2d at 711). Such is not the case here, where defendant interposed an answer and engaged in litigation, and where plaintiff, *inter alia*, also was actively engaged in litigation having responded to discovery demands, defendant Ali Sklar’s discovery-related motion to dismiss (Seq. 01), and on April 8, 2024, having served defendant at a Camden, New Jersey address with the Request for Preliminary Conference.⁸ On this record, it appears to the Court that plaintiff did not display an intent to abandon the action or forego the claims against defendant; “as long as proceedings are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the

⁸ See NYSCEF Doc. No. 32.

case should not be subject to dismissal” (*U.S. Bank Trust National Association v Nieves*, 239 AD3d 1020, 1021 [2d Dept 2025]).

The Court finds that any claim to relief under the full scope of CPLR § 3215 [c], including such relief as would have required plaintiff to offer sufficient cause for why the complaint should not be dismissed, has been waived by defendant (*Meyers*, 139 AD2d at 710).

Conclusion

Accordingly, it is hereby

ORDERED, that defendant Kevin Caraballo i/s/h/a Kevin Carabello motion (Seq. 02) for an order, pursuant to CPLR § 3215[c], dismissing the complaint for lack of *in personam jurisdiction*, is denied in every respect.

This constitutes the decision and order of the Court.

For Clerks use only
MG____
MD____
Motion Seq.#

FILED
JAN 15 2026
KINGS COUNTY CLERK'S OFFICE

E N T E R



J.S.C.

**HON. WAVNY TOUSSAINT
J. S. C.**