

<b>Foster v City of New York</b>
2026 NY Slip Op 30320(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Index No. 157448/2019
Judge: Nicholas W. Moyne
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

TABATHA FOSTER,

Plaintiff,

- v -

THE CITY OF NEW YORK, JEFFREY B. MADDREY

Defendant.

-----X

**INDEX NO.** 157448/2019

**MOTION DATE** 11/29/2024,  
07/11/2025

**MOTION SEQ. NO.** 007 008

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 1, 105, 164, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 202, 203, 204, 205, 206, 207, 208

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

Plaintiff moves, in motion sequence 007, for what she terms reconsideration of – but which in substance is a motion seeking leave to reargue - this court’s decision and order dated November 12, 2024, in which plaintiff’s motion for summary judgment dismissing the counterclaim of assault was granted and the defendant’s motion for summary judgment dismissing the complaint was granted with costs and disbursement to the defendant. Motion sequence 008 is plaintiff’s motion seeking to vacate a June 23, 2025 money judgment against her which was issued pursuant to the November 12, 2024 decision and order of the court. Motion sequences 007 and 008 are considered jointly in this decision. Following this court’s decision on the summary judgment motions, the plaintiff discharged her attorney and filed the instant motions *pro se*. As set forth hereinbelow, plaintiff’s motions are denied.

**Motion Sequence 007**

Motion sequence 007, although termed as a motion for reconsideration is in essence a motion for leave to reargue governed by CPLR § 2221.<sup>1</sup> Accordingly, such a motion shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any

<sup>1</sup> Although a motion for leave to reargue “shall be identified specifically as such” (CPLR § 2221[1]), and plaintiff did not specifically identify the motion as such, in light of petitioner’s status as a *pro se* litigant, the court considers the merits of her motion.

matters of fact not offered on the prior motion. Ms. Foster contends that the court incorrectly found that her second cause of action for assault had been previously dismissed as untimely. The court's January 20, 2021 decision on motion sequences 002, 003, and 004 (NYSCEF Doc. No. 105) clearly states "plaintiff's claim for damages resulting from an alleged assault in late April 2016, does not appear in her federal complaint, and it is plainly time-barred." However, the decretal paragraphs of the January 20, 2021 decision do state that Maddrey's motion "to dismiss the complaint is granted to the extent that the first and the fourth causes of action alleged against said defendant are dismissed and the motion is otherwise denied" (*Id.*). The plaintiff's assault charge was set forth in the Second Cause of Action. As such plaintiff correctly points out that the assault charge was not explicitly dismissed by the January 20, 2021 decision in the decretal paragraphs. However, that decision does correctly state that the plaintiff's assault claim is time-barred. Claims for assault or battery are subject to a one-year statute of limitations (CPLR § 215[3]). The latest allegation of assault and/or battery alleged in the complaint allegedly occurred in April of 2016 (Complaint, ¶ 53, NYSCEF Doc. No. 1). The instant action was not commenced until the end of July 2019, well beyond the limitations period. Further, as the January 20, 2021 decision correctly stated, the complaint does not relate back to the date of the filing of her earlier federal complaint. As such, the plaintiff's assault claim must be, and is, dismissed. Accordingly, the plaintiff's motion for leave to reargue is granted to the extent that leave is granted, and upon reargument, the court adheres to its prior order which granted defendant's motion for summary judgment in its entirety, and dismissed the complaint.

### **Motion Sequence 008**

In motion sequence 008, plaintiff moves to vacate the money judgment entered against her. Pursuant to CPLR § 5015, the court may relieve a party from a judgment on such terms as may be just upon the grounds of excusable default; newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial; fraud, misrepresentation, or other misconduct of an adverse party; lack of jurisdiction to render the judgment or order; or reversal, modification or vacatur of a prior judgment or order upon which it is based.

To the extent that plaintiff contends that she was not served with the proposed judgment, this is contradicted by the affirmation of service of the notice of settlement of proposed judgment (NYSCEF Doc. No. 179). "An affidavit of service constitutes prima facie evidence of proper service and the mere denial of receipt of service is insufficient to rebut the presumption of proper service created by a properly-executed affidavit of service" (*HSBC Bank USA v Gifford*, 224 AD3d 447 [1st Dept 2024] [internal quotations omitted]). In the instant matter, the affirmation of service of the notice of settlement of proposed judgment (NYSCEF Doc. No. 179) states that on January 22, 2025, the notice of settlement of proposed judgment was sent to Tabatha Foster via regular mail and certified mail. This constitutes prima facie evidence of proper service, which the plaintiff has failed to rebut. Accordingly, to the extent that the plaintiff contends that the notice of settlement of proposed judgment was not served on her and the judgment should therefore be vacated, that portion of the motion is denied.

Plaintiff also contends that the judgment should be vacated pursuant to 22 NYCRR § 202.48 as it was not submitted within 60 days after the signing and filing of the order directing that the order be settled or submitted. However, the judgment is pursuant to this court's November 12, 2024 decision (NYSCEF Doc. Nos. 158, 159) on the summary judgment motions, which granted the defendant summary judgment, with costs and disbursements upon submission of an appropriate bill of costs, and did not direct that a proposed judgment had to be settled or submitted on notice. The 60-day time limit for the submission of proposed judgments "applies only where the court explicitly directs that the proposed judgment or order be settled or submitted for signature" (*Funk v Barry*, 89 NY2d 364, 365 [1996]). Therefore, the defendant was not required to comply with 22 NYCRR 202.48 (see *Le Bihan v 27 Washington Sq. N. Owner LLC*, 205 AD3d 616, 618 [1st Dept 2022] ["The decision directs the Clerk to enter a judgment. Consequently, the rule's 60-day period for a party to submit a judgment does not apply."]; see also *Deutsche Bank Natl. Tr. Co. v Musheyev*, 203 AD3d 1027, 1029 [2d Dept 2022]). Furthermore, there is no prejudice to the plaintiff who was able to submit her opposition (NYSCEF Doc. No. 180) in February of 2025, months before the judgment was entered. Accordingly, the plaintiff's motion is denied.

### **Conclusion**

As set forth more fully herein above, it is hereby

**ORDERED** that the plaintiff's motion for leave to reargue (motion sequence 007) is granted to the extent that leave to reargue is granted; and it is further

**ORDERED** that, upon reargument, the court adheres to its November 12, 2024 Decision which granted plaintiff's motion for partial summary judgment dismissing the defendant's assault counterclaim and granting defendant's summary judgment motion dismissing the complaint in its entirety; and it is further

**ORDERED** that the plaintiff's motion to vacate the judgment against her (motion sequence 008) is denied.

(signature on following page)

This constitutes the decision and order of the court.

**Motion Sequence 007**

  
20260127165610M01N13D55147A2CFA4D6C8DCA0DBE1D9E7DD5

1/27/2026  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

NICHOLAS W. MOYNE, J.S.C.

**Motion Sequence 008**

  
20260127165610M01N13D55147A2CFA4D6C8DCA0DBE1D9E7DD5

1/27/2026  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

NICHOLAS W. MOYNE, J.S.C.