

**Veterans Hospitality Group, LLC v GM Canmar  
Residence Corp.**

2026 NY Slip Op 30344(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 151287/2024

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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**INDEX NO. 151287/2024**

VETERANS HOSPITALITY GROUP, LLC,

**MOTION DATE N/A**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

GM CANMAR RESIDENCE CORP., MARK HERSH,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISSAL.

Defendants’ motion to dismiss based on plaintiff’s failure to timely serve a complaint or, in the alternative, to disqualify plaintiff’s counsel is decided as described below. Plaintiff’s cross-motion for leave to an extension of time to file a complaint *nunc pro tunc* is granted.

**Background**

This action concerns plaintiff’s contention that defendants tortiously interfered with plaintiff by ensuring that a non-party HELP Social Service Corp. (“HELP”) vacated its sublease. Plaintiff explains that defendant GM Canmar Resident Corp. (“GM”) leased the premises to non-party Hotel 237, LLC (the “Hotel”) and that eventually the premises were subleased to HELP. HELP used the premises as an emergency homeless shelter and plaintiff contends that GM told HELP to stop paying rent to Hotel and that once Hotel was removed from its lease, HELP would be allowed to remain on the property.

Plaintiff argues that HELP heeded this advice, stopped paying rent and eventually left the space in 2022 despite the fact that HELP allegedly wanted to stay on for many more years.

Defendants move to dismiss based on plaintiff's failure to serve a complaint. They observe that plaintiff commenced this action via a summons with notice and that they filed a notice of appearance on February 21, 2024, which triggered plaintiff's time to file a complaint—and plaintiff never filed a complaint.

They also seek to disqualify plaintiff's counsel on the ground that the judge previously assigned to this case ruled in a related matter involving Hotel and GM that plaintiff's counsel could not represent Hotel.

Plaintiff cross-moves for leave to file a complaint. It explains that it has a reasonable excuse for the delay in filing the complaint in that it tried to be reasonable to opposing counsel. Plaintiff's counsel contends he told defendants' attorney that they had not put in a demand for a complaint and that he would give them a chance to file an answer or serve a demand for a complaint. Instead, according to plaintiff, defendants made the instant motion.

### **Discussion**

First, this Court apologizes for the delay in the issuance of this decision. This motion has been pending for over a year and should have been decided prior to this case's reassignment to the undersigned in December 2025.

As an initial matter, defendants are correct that they did not need to necessarily make a demand for a complaint. CPLR 3012(b) provides, in relevant part, that "If no demand is made, the complaint shall be served within twenty days after service of the notice of appearance. The court upon motion may dismiss the action if service of the complaint is not made as provided in

this subdivision.” Obviously, plaintiff did not file a complaint within 20 days after defendants filed a notice of appearance.

However, as this State has a long history of preferring cases to be decided on the merits, the Court grants the cross-motion to the extent that plaintiff is given leave to file a complaint *nunc pro tunc*. The fact is that defendants filed their notice of appearance on February 21, 2024 and plaintiff made its cross-motion on June 27, 2024 which, critically, included a proposed complaint. Simply put, that is not a significant amount of time to warrant dismissal of this case. Plaintiff shall upload a copy of the complaint as a separate e-filed document on or before February 5, 2026.

To the extent that defendants make arguments about the merits of the complaint, those claims can be assessed in a future dispositive motion. Plaintiff need not prove its case in order to file a complaint after commencing an action via a summons with notice.

However, the Court grants the branch of defendants’ motion to disqualify plaintiff’s counsel. Defendants explain that the judge previously assigned to this case (and the related action) disqualified plaintiff’s counsel in the related action. As noted above, the related action involves Hotel and GM. They observe that an attorney who had a significant role in the related action left counsel for defendants’ firm and joined plaintiff’s firm. And, critically, the First Department affirmed the prior judge’s decision to disqualify plaintiff’s counsel (*Hotel 237, LLC v G.M. Canmar Residence Corp.*, 235 AD3d 447, 448 [1st Dept 2025], *lv to appeal dismissed*, 44 NY3d 987 [2025]). The Court observes that plaintiff’s cross-motion did not oppose or address this issue at all. And so this Court disqualifies plaintiff’s counsel in this case too.

Accordingly, it is hereby

ORDERED that defendants' motion is denied to the extent it sought dismissal; and it is further

ORDERED that plaintiff's cross-motion is granted to the extent that it is given leave to file a complaint *nunc pro tunc* and it shall file the proposed complaint attached to its cross-motion on or before February 5, 2026; and it is further

ORDERED that the branch of defendants' motion to disqualify counsel for plaintiff is granted and Rosenberg and Estis, P.C. is hereby disqualified from representing plaintiff in this matter (after uploading the complaint), and it is further

ORDERED that counsel for the movants, within 21 days after the entry of this order, shall serve a copy of this order with notice of entry upon counsel for all parties; and it is further

ORDERED that the action is stayed from this date until 30 days after service of a copy of this order with notice of entry upon counsel for all parties, except that plaintiff's counsel may upload the proposed complaint, and plaintiff shall retain another attorney in place of the attorney named above; and it is further


ORDERED that the new attorney retained by plaintiff shall serve upon all parties a notice of appearance and file same with the Clerk of the General Clerk's Office and the Clerk of the Part within said 30-day period; and it is further

ORDERED that such filing with the Clerk of the General Clerk's Office and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website]; and it is further

ORDERED that if plaintiff does not appear at the next conference represented by an attorney, the complaint may be dismissed.

Next Conference: April 23, 2026 at 10 a.m. If plaintiff gets new counsel, the parties may upload a proposed discovery conference order on or before April 16, 2026. The Court will review the proposed order and assess whether or not an in-person conference is required. Otherwise, and particularly if plaintiff has not gotten a new attorney, the Court will hold the conference. Please check the docket prior to the appearance date.

1/29/2026  
DATE

  
ARLENE P. BLUTH, J.S.C.

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