

Gartner & Bloom, P.C. v Kleinplatz
2026 NY Slip Op 30489(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 161560/2024
Judge: Kathleen Waterman-Marshall
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

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GARTNER & BLOOM, P.C.,
Plaintiff,

- v -

SAMUEL JOSEPH KLEINPLATZ, 253 WEST 16 OWNERS,
INC.

Defendant.

INDEX NO. 161560/2024
MOTION DATE 06/20/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, plaintiff's motion for an order, pursuant to CPLR § 1006(f), permitting it to deposit settlement escrow funds into Court and discharging it from liability, and for a default judgment against Samuel Joseph Kleinplatz ("Mr. Kleinplatz"), is granted.

Background

According to the complaint, this action arises out of judgments and a settlement in two separate actions between Mr. Kleinplatz and 253 West 16 Owners, Inc. ("253 West 16"). In 2014, a judgment for \$16,800, and a judgment for \$9,000 were entered in favor of 253 West 16 and against Mr. Kleinplatz (and a non-party), related to a landlord-tenant dispute (the "Landlord-Tenant Judgments"). In 2017, Mr. Kleinplatz brought a personal injury action against 253 West 16, which settled at trial in 2024 for \$200,000 ("the Settlement Proceeds"). Mr. Kleinplatz was represented by Cellino & Barnes / Cellino Law in the 2017 personal injury action, and 253 West 16 was represented by Gartner & Bloom.

On June 11, 2024, Armstrong Teasdale, counsel for 253 West 16 in the landlord-tenant dispute, issued two restraining notices to 253 West 16's insurer, non-party Greater New York Insurance Company ("Greater New York"), advising of the Landlord-Tenant Judgments against Mr. Kleinplatz and the CPLR § 5222(b) restraint on the Settlement Proceeds. Notwithstanding these restraining notices, Greater New York issued the \$200,000 settlement check to Gartner & Bloom, 253 West 16's counsel in the personal injury action, on November 21, 2024. The Settlement Proceeds were deposited in Gartner & Bloom's escrow account.

Gartner & Bloom called Greater New York to confirm receipt of the settlement check. It was during this call that Granter & Bloom alleges it first learned of any restraining notices on the Settlement Proceeds when Greater New York directed Gartner & Bloom to distribute a portion of

the settlement proceeds to 253 West 16 to satisfy the Landlord-Tenant Judgments. Gartner & Bloom then received two restraining notices advising of the Landlord-Tenant Judgments. It attempted to resolve the issue with Mr. Kleinplatz' counsel, Cellino Law, to no avail. Notably, Gartner & Bloom alleges that the attorney at Cellino Law abruptly hung up during their telephone conversation to resolve the disbursement of the Settlement Proceeds and, shortly thereafter, filed an order to show cause in the underlying personal injury action to compel Gartner & Bloom to forward them. Garner & Bloom then brought this action against Mr. Kleinplatz and 253 West 16 seeking to require defendants to litigate their claims related to distribution of the Settlement Proceeds against one another, restrain defendants from bringing an action for the Settlement Proceeds, permit it to deposit the Settlement Proceeds into court, and discharge it of liability.

Plaintiff served the summons and complaint in this interpleader matter on Mr. Kleinplatz via personal service on January 11, 2025, on Cellino Law via the Secretary of State on December 13, 2024, and on the Board President of 253 West 16 on December 20, 2024. Mr. Kleinplatz emailed plaintiff to advise that he was represented by Cellino Law in this interpleader matter, and that Gartner & Bloom should contact Cellino Law. Gartner & Bloom contends that despite this email from Mr. Kleinplatz, there has been no request to extend his time to answer this action. Neither Mr. Kleinplatz nor 253 West 16 have responded to the complaint.

After Gartner & Bloom served this interpleader action, Mr. Kleinplatz and 253 West 16 agreed to permit Mr. Kleinplatz' to withdraw his order to show cause to compel Gartner & Bloom to forward the Settlement Proceeds in the underlying personal injury action (February 6, 2025 stipulation). In this interpleader matter, Gartner & Bloom also stipulated to give Mr. Kleinplatz until July 30, 2025 to oppose the instant motion and stipulated to give 253 West 16 until July 31, 2025 to respond to the complaint.

Mr. Kleinplatz, however, did not timely file opposition, instead filing his opposition on August 4, 2025. No excuse has been provided for the late filing. Similarly, 253 West 16 has not responded to the complaint, despite the stipulation extending time to do so, nor has it appeared on this motion.

Parties Positions

Given the facts – Gartner & Bloom had no notice of the restraining notices served on Greater New York until it called Greater New York to confirm receipt and deposit of the settlement check, and upon such notice it attempted to resolve the competing claims for the Settlement Proceeds with Cellino Law, Mr. Kleinplatz' personal injury attorneys – Gartner & Bloom is a stakeholder, under CPLR § 1006, entitled to commence this interpleader action against the competing claimants for the settlement proceeds. Gartner & Bloom contends that it should be permitted to deposit the Settlement Proceeds into court and is entitled to a declaration of no liability while the claimants litigate their claims to the settlement proceeds.

Although not a named party in the complaint, Mr. Kleinplatz' counsel in the underlying personal injury action, Cellino Law, has filed an affirmation in partial support of the motion. Cellino Law contends that it has a Judiciary Law § 475 lien against the Settlement Proceeds and supports that portion of the motion seeking to deposit the settlement funds into court; however,

Cellino Law opposes that portion of the motion which seeks plaintiff's attorney's fees. Cellino Law contends that Gartner & Bloom has a conflict of interest due to its representation of 253 West 16 and payment for such representation by the non-party insurer Greater New York.

Mr. Kleinplatz, via separate counsel not affiliated with Cellino Law, opposes the motion in its entirety. He contends that Gartner & Bloom wrongly accepted the settlement proceeds in the first instance and have engaged in a conspiracy with Greater New York and 253 West 16 to harass him via this interpleader action. He argues that Gartner & Bloom lacks standing and should be disqualified from bringing this action. Finally, he contends that he should be granted leave to file a late answer.

253 West 16 is represented by Fox Rothschild in this matter but has not appeared on this motion, nor has it filed an answer to the complaint, despite the stipulation extending its time to answer.

In reply, Gartner & Bloom notes that Mr. Kleinplatz' opposition is untimely, reiterates that it has no interest in the Settlement Proceeds, and advises that it takes no position on Mr. Kleinplatz' request to serve a late answer.

Discussion

CPLR § 1006 permits “a stakeholder [to] commence an action of interpleader against two or more claimants,” and “after the time for all parties to plead has expired, the stakeholder may move for an order discharging [them] from liability in whole or in part to any party” (CPLR § 1006[a] and [f]). The stakeholder may also seek to deposit the money into court (CPLR § 1006[g]). In short, CPLR § 1006 permits a stakeholder to compel competing claimants to litigate their claims among themselves, deposit money into court, and seek a declaration of no liability (Practice Commentary C1006:1, citing *Lincoln Life and Annuity Co. of N.Y. v Caswell*, 31 AD3d 1 [1st Dept 2006]).

Although it appears that the instant motion was brought before the time for all parties to respond to the complaint had expired (*see* NYSCEF Doc. No. 5 [stipulation extending time for 253 West 16 to answer to July 31, 2025]), the parties' time to do so has expired during the pendency of this motion and no party has filed an answer to the complaint. Accordingly, the Court finds that plaintiff is a stakeholder under CPLR § 1006, and the time for all parties to plead has expired, thus entitling Gartner & Bloom for a default judgment on its complaint.

CPLR § 3215(a) provides that a plaintiff may obtain a default judgment when a defendant has failed to appear or plead. The plaintiff must provide proof of service of the summons and complaint, proof of the underlying facts constituting the claim, and proof of default (CPLR § 3215[f]; *see also Bigio v Gooding*, 213 AD3d 480 [1st Dept 2023]; *SRMOF II 2012-I Trust v Tella*, 139 AD3d 599 [1st Dept 2016]; *Green Tree Servicing, LLC v Cary*, 106 AD3d 691, 692 [2d Dept 2013]). A defendant who has defaulted is “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

It is undisputed that service upon Mr. Kleinplatz and 253 West 16 was properly effectuated and that their respective times to answer the complaint has expired (CPLR 320). It is further undisputed that neither defendant has answered the complaint. Gartner & Bloom has demonstrated proof of the facts constituting its claim, chiefly that there are two or more claimants to the Settlement Proceeds it received and that in light of the restraining notices, it is unclear how the settlement funds should be disbursed. Accordingly, Gartner & Bloom has established its prima facie entitlement to a default judgment against on its complaint against defendants and that it may, pursuant to CPLR § 1006(f) and (g) discharge its liability and deposit the settlement funds into court (*New York Life Ins. Co. v Lowy*, 40 AD3d 295 [1st Dept 2007]; *Bigio* 213 AD3d 480; *SRMOF II 2012-I Trust*, 139 AD3d 599 [1st Dept 2016]).

The Court has not considered Mr. Kleinplatz' untimely opposition, given the pattern of dilatory conduct.¹ The Court has also not considered the submissions by Cellino Law as it is not a party, nor does it represent a party in this interpleader action. Accordingly, a default judgment against on the complaint is warranted, as is a deposit of the settlement funds into Court.

Were the Court to consider Mr. Kleinplatz' opposition, it would find it without merit (*Nachbaur v American Transit Ins. Co.*, 300 AD2d 74, 75 [1st Dept 2002]). The opposition devotes significant portions to unsupported accusations against opposing counsel, and some unsupported conspiracy by opposing counsel and the insurer to harass Mr. Kleinplatz via this action. This is insufficient to deny the motion (*id.*). Mr. Kleinplatz' argument that Gartner & Bloom lacks standing or should be disqualified from bringing this action cites no authority related to standing or disqualification, and fails to comply with CPLR 2215's requirement that the relief be brought by cross-motion.² In the absence of a proper cross-motion, the Court, in its discretion, declines to consider the improper request (*Fried v Jacob Holding, Inc.*, 110 AD3d 56, 64-65 [2d Dept 2013] ["a party in compliance with CPLR 2215 is entitled to have its cross motion considered; a party not in compliance with the statute must hope that the court opts, in the exercise of its discretion, to entertain the request"]).

Mr. Kleinplatz' request for additional time to answer the complaint also fails to comport with CPLR 2215, and the Court declines to exercise its discretion to reach the issue. Assuming, *arguendo*, that the Court were to reach the issue, leave for additional time to answer would be denied. Notwithstanding the policy favoring disposition of controversies on their merits, and that Gartner & Bloom concedes it orally stated it would permit Mr. Kleinplatz additional time to answer, in the absence of a stipulation, leave to extend time requires demonstration of a reasonable excuse for the delay and a potentially meritorious defense (CPLR 3012[d]; *Krepplein v Linda Kleban Management*, 31 AD3d 275 [1st Dept 2006]; *Emigrant Bank v Rosabianca*, 156 AD3d 468 [1st Dept 2017] *L & Z Masonry Corp. v Mose*, 167 AD3d 728 [2d Dept 2018]).

¹ Mr. Kleinplatz did not timely answer the complaint, and has offered no justification or excuse for this failure. Similarly, Mr. Kleinplatz offers no justification or excuse for his failure to timely file opposition papers to this motion. Additionally, after withdrawing his order to show cause to compel release of settlement funds in the underlying personal injury matter on February 6, 2025, Mr. Kleinplatz took no action to compel release of the settlement funds for six-months when he filed his untimely opposition to this interpleader action.

² The only authority cited by Mr. Kleinplatz' opposition is CPLR § 5222(b) which sets forth the effect, prohibition of transfer, and duration of a restraining notice.

Mr. Kleinplatz has offered neither; he has not submitted a proposed answer or any evidence in support of his claim that “it is defendant’s position that a portion of the judgment has already been garnished from his bank account and pay checks,” such as bank record or pay stubs. Notably, Mr. Kleinplatz has not filed an affidavit himself in support of this alleged defense; instead, the defense is raised solely by counsel who has no first-hand knowledge of the facts. Nor has Mr. Kleinplatz provided any excuse for his failure to timely answer. Additionally, the failure to provide the proposed answer with the request for leave to file a late answer does not permit the Court to assess the sufficiency of the untimely pleading, including whether the defendant has reasonably stated defenses to the action, as is required (*Emigrant Bank*, 156 AD3d 472-73 *citing Guzetti v City of New York*, 32 AD3d 234, 238 [1st Dept 2006, McGuire, J., concurring]; *Castillo v Garzon-Ruiz*, 290 AD2d 288, 290 [1st Dept 2002]). In the absence of an excuse and any demonstration of a meritorious defense, Mr. Kleinplatz’ request for leave to file a late answer must be denied (*LePatner & Assocs., LLP v Horowitz*, 81 AD3d 472 [1st Dept 2011]).

Gartner & Bloom is entitled to attorney’s fees related to this interpleader action (CPLR § 1006[f]); however, in determining the amount of attorney’s fees, the Court will “bear in mind that any award of attorneys’ fees should be limited, given that plaintiff has no interest in the underlying dispute and has been required to establish only its entitlement to interpleader relief as a neutral stakeholder” (*Lincoln Life and Annuity Co. of New York v Caswell*, 31 AD3d 1 [1st Dept 2006]). Given that neither Mr. Kleinplatz nor 253 West 16 have answered the complaint, neither defendant has shown a clear right to the escrow funds and Gartner & Bloom’s attorneys’ fees for this interpleader action are properly imposed equally against both defendants (*Fischbein, Badillo, Wagner v Tova Realty, Co.*, 193 AD2d 442 [1st Dept 1993]).³

Accordingly, it is

ORDERED that Gartner & Bloom’s motion is granted, plaintiff shall have a default judgment on its complaint, and may deposit the escrowed Settlement Proceeds into Court following submission of a proposed order for same; and it is further

ORDERED that Gartner & Bloom shall submit a proposed order, together with notice of settlement, granting entry of default judgment on the complaint and directing deposit of the escrowed Settlement Proceeds into Court, no later than March 6, 2026; and it is further

ORDERED that, upon depositing the Settlement Proceeds into Court, Gartner & Bloom shall have no liability related to the Settlement Proceeds; and it is further

ORDERED that the issue of reasonable attorney’s fees due Gartner & Bloom for this interpleader action is severed and shall proceed to an **inquest on paper submissions only on April 30, 2026**; and it is further

³ Mr. Kleinplatz’ unsupported allegations regarding standing and disqualification are insufficient to require a framed issue hearing on the issue of whether plaintiff is entitled to attorney’s fees (*see e.g. Progressive Casualty Ins. Co. v Persaud*, 216 AD3d 642, 644 [2d Dept 2023] [framed issue hearing not required to “explore unsubstantiated conjecture”]).

ORDERED that papers in support of attorney’s fees, including exhibits thereto, shall be filed via NYSCEF, no later than March 19, 2026; and it is further

ORDERED that papers in opposition, including exhibits thereto, shall be filed via NYSCEF, no later than April 24, 2026; and it is further

ORDERED that should defendants seek to cross-examine plaintiff’s witnesses solely with respect to the amount of attorney’s fees, they shall so state in bold type on the front page of their papers “CROSS EXAMINATION REQUESTED” and identify which witnesses defendants seek to cross-examine. The failure to include same shall constitute waiver of cross-examination and the matter shall proceed to inquest on papers only; and it is further

ORDERED that in the event cross-examination is requested, the Court will set the matter down for an in-person hearing.



KATHLEEN WATERMAN-MARSHALL,
J.S.C.

2/9/2026
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: