

<b>Nullet v Collaborative Constr. Mgt.</b>
2026 NY Slip Op 31223(U)
March 27, 2026
Supreme Court, New York County
Docket Number: Index No. 164163/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 164163/2025

JOSEPH NULLET,

MOTION DATE 11/24/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

COLLABORATIVE CONSTRUCTION MANAGEMENT, 7
HANOVER FEE OWNER CO. LLC

DECISION + ORDER ON MOTION

Defendants.

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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, 25, 26, 27, 28, 29, 30

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants' motion to dismiss is granted. Plaintiff previously sued Defendants for personal injuries in an action captioned Nullet v. Collaborative Construction Management LLC, et al., Index No. 157119/2022 (Supreme Court, New York County) (the "Prior Action"). In the Prior Action, Plaintiff filed affidavits of service on Defendants on December 15, 2022. There was no further action on the docket until Plaintiff moved for default judgment years late on January 23, 2025. In response, Defendants moved to dismiss pursuant to CPLR 3215(c).

By order dated September 29, 2025, Hon. Leslie A. Stroth denied Plaintiff's motion for default judgment and granted Defendants' motion to dismiss, finding Plaintiff failed to provide any cause for the delay in moving for default. Less than one month later, Plaintiff commenced this action using the previously dismissed Complaint in Prior Action. Now, Defendants move to dismiss, arguing that the Complaint is barred pursuant to the doctrines of res judicata, collateral estoppel, and the statute of limitations.

Plaintiff opposes and argues that *res judicata* and collateral estoppel do not apply because dismissal was not on the merits. Plaintiff further argues the statute of limitations does not apply pursuant to CPLR 205(a), which allows a plaintiff to commence a new proceeding within six months of termination if the action is “terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits”.

As a preliminary matter, since dismissal was not on the merits, the doctrine of *res judicata* does not apply (*see, e.g. Deeton v Ruckus 85 Corp.*, 243 AD3d 436 [1st Dept 2025]). Collateral estoppel does not apply because the dispositive issue being litigated here – namely whether CPLR 205(a) applies, was not litigated or decided in the Prior Action (*see, e.g. Buechel v Bain*, 97 NY2d 295 [2001] [collateral estoppel precludes party from relitigating in a subsequent action an issue raised in a prior action or proceeding and decided against that party or those in privity]).

However, the Court is required to dismiss as CPLR 205(a) does not apply to the facts of this case (*see Xue Chen v Lockett*, 193 AD3d 563 [1st Dept 2021] *lv denied* 38 NY3d 902 [2022]). In affirming the Decision of Justice Adam Silvera, the First Department found that where a trial court outlines specific conduct demonstrating a delay in proceeding, including in a decision dismissing an action pursuant to CPLR 3215(c), the prior action was “dismissed for ‘neglect to prosecute’ within the meaning of CPLR 205(a) (*see Chen, supra.*)”. In Justice Stroth’s Decision and Order dismissing the prior proceeding, she specifically found that “Plaintiff has failed to provide any cause as to why the motion for default was not made timely. Plaintiff has further failed to oppose Defendants’ motion to dismiss based on Plaintiff’s failure to prosecute or otherwise explain the cause for delay.” Plaintiff never moved to renew explaining the delay, and even in

opposition to this motion, Plaintiff still provides no reason for the multi-year delay in moving for default judgment.

While the Court is cognizant of the tension between the decisions of *Xue Chen v. Lockett*, 193 A.D.3d 563 (1st Dept. 2021) and *Estrella v. East Tremont Medical Center*, 193 A.D.3d 567 (1st Dept 2021), that tension can be resolved through a careful reading of *Estrella*, where the First Department held:

“The prior action had been dismissed under CPLR 3215(c) for plaintiff’s failure to proceed to entry of judgment within one year of default, nor did the court include any findings of specific conduct demonstrating ‘a general pattern of delay in proceeding with the litigation,’ as required by statute to establish neglect to prosecute”

Importantly, in *Chen*, and in this case, there were specific findings in the decisions dismissing pursuant to CPLR 3215(c) demonstrating a “pattern of delay in proceeding with the litigation.” The Court is mindful of the Court of Appeals’ instruction that “[l]itigation cannot be conducted efficiently if deadlines are not taken seriously . . . [and] that disregard of deadlines should not and will not be tolerated” (*Cadichon v Facelle*, 18 NY3d 230, 236 [2011] quoting *Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C., [Habiterria Assoc.]*, 5 NY3d 514, 521 [2005]). CPLR 3215(c) and the “failure to prosecute” exception contained in CPLR 205 were designed to provide ramifications for parties that do not take deadlines seriously. The Legislature’s intent in enacting CPLR 205 and CPLR 3215(c), coupled with binding precedent, requires enforcing those ramifications here. Therefore, the motion to dismiss is granted.

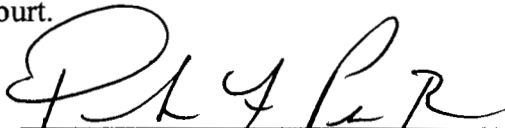
Accordingly, it is hereby,

ORDERED that Defendants’ motion is granted, and the Complaint is dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/27/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE