

Kenan v New York City, Sanitation Dept.
2026 NY Slip Op 31345(U)
April 2, 2026
Supreme Court, New York County
Docket Number: Index No. 156042/2018
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A, KINGO PART 65M

Justice

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SHAHAR KENAN,

Plaintiff,

- v -

NEW YORK CITY, SANITATION DEPARTMENT,

Defendant.

INDEX NO. 156042/2018

MOTION DATE 02/24/2026

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 127, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179, 180, 181

were read on this motion for SUMMARY JUDGMENT.

Plaintiff Shahar Kenan ("Plaintiff"), appearing pro se, moves by consolidated motion for an order vacating this court's April 1, 2025 order of dismissal pursuant to CPLR § 5015(a)(1) and CPLR § 5015(a)(3), granting leave to amend the complaint pursuant to CPLR § 3025(b), awarding summary judgment on liability and damages pursuant to CPLR § 3212, imposing discovery sanctions pursuant to CPLR § 3126, and awarding related relief, including costs and interest.

The motion arises from Plaintiff's claim that municipal actors unlawfully seized and destroyed his vehicle and related property, and seeks restoration of the action to the active calendar and adjudication of the claims on the merits. The relief requested in the motion papers includes vacatur of dismissal, amendment of the pleading, summary judgment on liability and damages, and sanctions relating to alleged discovery violations.

The court has carefully considered the motion in its entirety, including all submissions of the parties, the procedural history of the case, and the governing legal standards established by the Court of Appeals and the Appellate Division, First Department. For the reasons that follow, the motion is granted in part and denied in part.

BACKGROUND, PROCEDURAL HISTORY, AND ARGUMENTS

This action arises from events alleged to have occurred on or about March 29, 2017, when Plaintiff contends that employees or agents of the City of New York seized and destroyed his vehicle and related property without lawful authority. Plaintiff commenced this action in 2018

asserting claims sounding in negligence, conversion, and constitutional violations against municipal defendants.

The procedural history of the matter reflects prolonged discovery disputes and multiple scheduled appearances. Orders were issued directing depositions and other discovery, and Defendant maintains that Plaintiff failed to comply with those directives over an extended period of time. The record reflects that Plaintiff did not appear at certain scheduled conferences, including the conference that resulted in dismissal of the action on April 1, 2025.

Following the dismissal, Plaintiff moved to vacate the order and restore the action to the calendar, asserting that his failure to appear was not willful but resulted from medical and logistical difficulties, including documented psychiatric limitations affecting his ability to manage litigation responsibilities. Plaintiff further asserts that he appeared in good faith at prior conferences and relied upon representations that the matter would be adjourned.

More specifically, Plaintiff contends that vacatur of the dismissal is warranted because his nonappearance resulted from circumstances beyond his control, including illness and reliance upon representations that the conference would be adjourned. Plaintiff asserts that his conduct was not willful and that he has consistently sought to pursue the litigation in good faith. Plaintiff further contends that he has potentially meritorious claims supported by documentary evidence and sworn statements, and that public policy favors resolution of cases on the merits rather than dismissal based on procedural defaults.

Plaintiff also argues that leave to amend the complaint should be granted because the proposed amendments arise from the same underlying transaction and do not prejudice the defense. Plaintiff asserts that the amendments merely clarify existing claims and identify additional municipal actors whose identities were not previously known.

Defendant opposes the motion and contends that Plaintiff's noncompliance has been longstanding and repeated, and that the dismissal was warranted based upon a pattern of defaults and failure to prosecute the action. Defendant further contends that Plaintiff has failed to demonstrate diligence in pursuing discovery or complying with court orders.

Defendant further argues that the proposed amendments are time-barred and that summary judgment is premature because discovery remains incomplete and disputed issues of fact exist regarding liability and damages. Defendant further contends that Plaintiff has not demonstrated willful or contumacious conduct by the defense sufficient to warrant discovery sanctions.

The court has reviewed the complete procedural history and finds that the record reflects both periods of noncompliance and evidence of continued effort by Plaintiff to pursue the litigation. The court therefore evaluates the motion under the governing legal standards applicable to vacatur, amendment of pleadings, summary judgment, and discovery sanctions.

DISCUSSION

I. Vacatur of Dismissal CPLR § 5015

A motion to vacate a default pursuant to CPLR § 5015(a)(1) requires the movant to demonstrate both a reasonable excuse for the default and a potentially meritorious cause of action. The Court of Appeals has long recognized that these requirements are grounded in the equitable discretion of the trial court and must be applied in a manner consistent with the strong public policy favoring resolution of disputes on the merits. In *Gray v B.R. Trucking Co.*, 59 NY2d 649, 650 (1983), the Court of Appeals held that vacatur of a default requires proof of both a reasonable excuse and a meritorious claim, and that the determination rests within the sound discretion of the court.

The Court of Appeals has further emphasized that the preference for adjudication on the merits should guide judicial discretion in determining whether to vacate a default. In *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 (2003), the Court of Appeals observed that dismissal of an action is a drastic remedy that should be reserved for cases in which the failure to appear or comply with court orders reflects willful or contumacious conduct.

At the same time, the Court of Appeals has made clear that compliance with court orders and procedural rules is essential to the orderly administration of justice. In *Kihl v Pfeffer*, 94 NY2d 118, 123 (1999), the Court held that repeated failure to comply with discovery obligations may warrant dismissal of an action and that litigants must adhere to court directives in a timely manner.

Applying these principles to the present case, this court finds that Plaintiff has demonstrated a sufficient basis for vacatur of the dismissal pursuant to CPLR § 5015(a)(1). The record reflects that Plaintiff has asserted medical and logistical difficulties affecting his ability to manage litigation responsibilities, and that he has continued to pursue the action following dismissal. The court further finds that Plaintiff has presented evidence supporting the existence of potentially meritorious claims arising from the alleged seizure and destruction of property.

The court does not find, however, that vacatur is warranted pursuant to CPLR § 5015(a)(3). Relief under that provision requires proof that the judgment or order was obtained through fraud, misrepresentation, or other misconduct by an adverse party. Courts have consistently held that conclusory allegations of misconduct are insufficient to establish entitlement to relief under CPLR 5015(a)(3). In *Shaw v Shaw*, 97 AD2d 403 (2d Dept 1983), the Appellate Division, Second Department, held that vacatur under this provision requires clear and convincing evidence of improper conduct that prevented a fair adjudication. The record before this court does not contain such evidence.

Accordingly, the court exercises its discretion to vacate the dismissal pursuant to CPLR § 5015(a)(1) and restore the action to the calendar in the interest of justice.

II. Leave to Amend – CPLR § 3025

CPLR § 3025(b) provides that leave to amend a pleading shall be freely given upon such terms as may be just. The Court of Appeals has repeatedly emphasized the liberal policy favoring amendment of pleadings in order to ensure that cases are decided on their merits rather than on technical pleading defects. In *Fahey v County of Ontario*, 44 NY2d 934, 935 (1978), the Court of

Appeals held that leave to amend should be granted absent prejudice or surprise resulting directly from the delay.

The Court of Appeals reaffirmed this principle in *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 (1983), where it held that mere exposure to additional liability is not sufficient to establish prejudice and that amendment should be permitted where the opposing party has not demonstrated a real impediment to preparing a defense.

The Appellate Division, First Department, has consistently applied these principles in granting leave to amend where the proposed pleading arises from the same underlying transaction as the original complaint. In *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010), the court held that amendment should be permitted where the proposed claims are not palpably insufficient or devoid of merit.

In the present case, the court finds that the proposed amended complaint arises from the same underlying transaction as the original pleading and does not introduce wholly new factual allegations unrelated to the original claims. The court further finds that Defendant has not demonstrated prejudice sufficient to warrant denial of leave to amend.

However, the court also recognizes that amendment may be denied where the proposed claims are time-barred or legally insufficient. The Appellate Division, Second Department, has held that leave to amend should be denied where the proposed pleading is palpably insufficient as a matter of law. In *Lucido v Mancuso*, 49 AD3d 220 (2d Dept 2008), the Appellate Division, Second Department, held that amendment may be denied where the proposed claims lack legal merit.

Accordingly, the court grants leave to amend the complaint to the extent that the amended pleading asserts claims arising from the same underlying transaction and that are not barred by applicable statutes of limitation.

III. Summary Judgment — CPLR § 3212

Summary judgment is a drastic remedy that should be granted only where the movant establishes entitlement to judgment as a matter of law by demonstrating the absence of material issues of fact. In *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986), the Court of Appeals held that the party seeking summary judgment bears the initial burden of making a prima facie showing of entitlement to judgment.

The Court of Appeals further held in *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985), that failure to make such a showing requires denial of the motion regardless of the sufficiency of the opposing papers.

In the present case, the court finds that material issues of fact remain regarding liability, causation, and damages. Discovery has not been completed, and the record reflects disputed factual issues concerning the circumstances of the alleged seizure and destruction of property.

Under these circumstances, summary judgment would be premature. The Appellate Division has repeatedly held that summary judgment should be denied where discovery remains outstanding or where essential facts are within the knowledge of the opposing party.

Accordingly, the branch of the motion seeking summary judgment is denied.

IV. Discovery Sanctions — CPLR § 3126

Sanctions pursuant to CPLR § 3126 require a showing that a party's failure to comply with discovery obligations was willful, contumacious, or in bad faith. In *Kihl v Pfeffer*, 94 NY2d 118 (1999), the Court of Appeals held that dismissal or other sanctions may be imposed only where the record demonstrates deliberate and repeated noncompliance with discovery orders.

In the present case, the record does not establish such conduct by Defendant. While discovery disputes have occurred, the evidence does not demonstrate deliberate refusal to comply with court orders.

Accordingly, the request for discovery sanctions is denied. It is hereby

ORDERED that Plaintiff's motion to vacate the April 1, 2025 order of dismissal pursuant to CPLR § 5015(a)(1) is granted, and the action is restored to the active calendar; and it is further

ORDERED that Plaintiff's motion to vacate the dismissal pursuant to CPLR § 5015(a)(3) is denied; and it is further

ORDERED that Plaintiff's motion for leave to amend the complaint pursuant to CPLR § 3025(b) is granted to the extent set forth herein; and it is further

ORDERED that Plaintiff's motion for summary judgment pursuant to CPLR § 3212 is denied; and it is further

ORDERED that Plaintiff's motion for discovery sanctions pursuant to CPLR § 3126 is denied; and it is further

ORDERED that within twenty (20) days of entry, Plaintiff shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court and upon all parties in accordance with the applicable provisions of the New York State Courts Electronic Filing System (NYSCEF) and the protocols established by the Clerk of the Court; and it is further

ORDERED that upon such service, and upon filing of proof of service thereof, the Clerk of the Court is directed to restore this matter to the active calendar in Part 5, Supreme Court, New York County, where it shall proceed in the ordinary course before the Honorable Ilana J. Marcus, J.S.C.; and it is further

ORDERED that the restoration of this matter to the active calendar shall be deemed effective upon the Clerk’s receipt of the notice of entry and proof of service in accordance with NYSCEF procedures; and it is further

ORDERED that the parties shall thereafter appear for a status or compliance conference in Part 5 on a date to be scheduled by that Part.

This constitutes the decision and order of the court.

4/2/2026
DATE

HASA A. KINGO, 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