Mendez v Hertz Corp.

2026 NY Slip Op 31657(U)

April 8, 2026

Supreme Court, New York County

Docket Number: Index No. 158272/2024

Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M

Justice

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PEDRO MENDEZ,

Plaintiff,

- v -

THE HERTZ CORPORATION, ALLIANCE 185TH PARKING LLC

Defendant.

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INDEX NO. 158272/2024

MOTION DATE 06/11/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Plaintiff commenced this negligence action after sustaining injuries due to an alleged sidewalk defect. The alleged sidewalk defect is next to a parking garage at 652 W 185th Street, and Defendant Alliance 185th Parking LLC ("Alliance") is a tenant at 662 W 184th Street. Plaintiff alleges that Alliance was responsible for maintaining the sidewalk on which Plaintiff was injured.

Plaintiff moves for leave to renew and reargue its motion for default under CPLR §§ 2221(d) and (e). Plaintiff alleges that new evidence permits the granting of leave to renew their motion for default. Specifically, Plaintiff cites to an order granting default to Heights Broadway LLC, a third-party plaintiff, against Alliance (Decision and Order of James d'Auguste, J.S.C., NYSCEF Doc. No. 30).

In addition, Plaintiff moves to reargue their motion for default, stating that the Court misapprehended the law by denying the original motion. For the reasons outlined below, the Court denies Plaintiff's motion.

A motion for leave to renew pursuant to CPLR § 2221(e) "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination," and must "contain reasonable justification for the failure to present such facts on the prior motion."

CPLR § 2221(d) provides that a motion for leave to reargue; (1) must be specifically identified as such; (2) must be based upon matters of law or fact overlooked or misapprehended in the prior decision; and (3) must be made within thirty (30) days after service of the order with notice of entry (*see* CPLR § 2221[d]; *see also Gregory v Natl. Amusements, Inc. doing business as Whitestone Multiplex Cinemas*, 179 AD3d 468, 469 [1st Dept 2020]).

An application for a default judgment must be supported with "proof of service[,] … proof of the facts constituting the claim, [and] the default" (CPLR § 3215[f]). In addition to furnishing proof of service, the plaintiff must offer "some proof of liability… to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Fefer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*id.*). "[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim" satisfies this statutory requirement (*Beltre v Babu*, 32 AD2d 722, 723 [1st Dept 2006]).

As an initial matter, prior to the present action, Plaintiff initiated a separate action in front of Judge d'Auguste (160102/2023) based upon similar facts as in the current action, but against different defendants. In relevant part, one of the defendants, not a party here, Heights Broadway LLC, served a third-party complaint on Alliance. Heights Broadway LLC moved for default judgment against Alliance. Judge d'Auguste granted Heights Broadway LLC's motion for default against Alliance (NYSCEF Doc. No. 30).

First, regarding Plaintiff's motion for leave to renew their motion for default, Plaintiff points to the order of Judge d'Auguste that did not exist when Plaintiff first moved for default. Plaintiff argues that because Judge d'Auguste granted Heights Broadway LLC's motion for default against Alliance, Plaintiff's motion for default against Alliance should also be granted. The Court does not find that this separate default judgment by another judge informs or relates to Plaintiff's motion for default judgment, because the third-party's motion for default does not substantively relate to Plaintiff's motion for default. While both motions are directed toward the same party, the two motions are not the same, and this Court is not bound by a decision of another court with coordinate jurisdiction. For that reason, and because no other new facts or evidence are presented in Plaintiff's motion, Plaintiff's motion for leave to renew their motion for default is denied.

Second, regarding Plaintiff's motion to reargue his motion for default judgment, Plaintiff argues that this Court "overlooked the law" (Plaintiff's Motion, NYSCEF Doc. No. 26 at 7). Specifically, Plaintiff argues that the fact of "whether the defaulting party had notice of the condition that caused the plaintiff's accident" is not a prerequisite to establish default, and that the Plaintiff's motion for default should not have been denied based on the failure to include Alliance's lease, detailing Alliance's tenancy, in his moving papers (*id.*, at 8-9).

In his original motion, Plaintiff describes service upon Alliance pursuant to Business Corporation Law § 303, via Secretary of State of New York (NYSCEF Doc. No. 28). In his affirmation of merit submitted with the original motion for default, Plaintiff states that he was injured after a trip and fall on a sidewalk was caused by the negligence of, *inter alia*, Alliance.

The Court finds that Plaintiff's affirmation is insufficient to support a motion for default against Alliance because while it was submitted by someone with actual knowledge of the

circumstances, Plaintiff fails to establish the *prima facie* validity of his claims. Plaintiff's affidavit does not describe the sidewalk defect, and does not describe Alliance's responsibility for said sidewalk apart from the conclusory assertion that "[Alliance] was a proper party to be sued" (Plaintiff's Affirmation, NYSCEF Doc. No. 19). Despite Alliance's failure to appear, Plaintiff has not established the *prima facie* validity of his claims, and therefore, Plaintiff's motion to reargue is denied.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to renew and reargue its motion for default under CPLR §§ 2221(d) and (e) is denied.

The foregoing constitutes the order and decision of the Court.

4/8/2026
DATE

LESLIE A. STROTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE