

<b>ACE Am. Ins. Co. v Lopez</b>
2026 NY Slip Op 31877(U)
April 29, 2026
Supreme Court, Kings County
Docket Number: Index No. 531693/2021
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.: 531693/2021

Motion Date: 4/27/26

Mot. Seq. Nos.: 3

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ACE AMERICAN INSURANCE COMPANY and  
BUDGET RENT A CAR SYSTEM, INC.,

Plaintiffs,

-against-

**DECISION/ORDER**

JUAN CARLOS JIMENEZ LOPEZ,

Defendant,

and

MANUEL LIZONDRO GARCIA and JOSE ESPINOZA,

Nominal Defendants.

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The following papers, which are e-filed with NYSCEF as items 1-79, were read on this motion:

Plaintiffs move pursuant to CPLR 3215 for a default judgment declaring that (1) defendant Juan Carlos Jimenez Lopez is not an insured under the Policy issued by ACE American; (2) plaintiff Ace is not obligated to indemnify or defend defendant Juan Carlos Jimenez Lopez, in the Underlying Action, and; (3) plaintiff Ace is not obligated to pay any damages which may be awarded against defendant Juan Carlos Jimenez Lopez in the Underlying Action. Defendant cross-moves to vacate his default pursuant to CPLR 5015(a)(1).

In the underlying action on January 5, 2017, Jose Espinoza rented a van and executed a rental agreement from Budget, a car rental company.<sup>1</sup> He purchased supplemental liability insurance from Budget for his vehicle for which plaintiff Ace issued a policy.<sup>2</sup> Espinoza's vehicle later came into contact with Manuel Lizondro Garcia's vehicle which resulted in Garcia's serious injury.<sup>3</sup> This is an action for declaratory judgment that plaintiff insurer has no duty to insure, indemnify, defend, or pay any damages that may be awarded against defendant Juan Carlos Jimenez Lopez. In the coverage action, defendant Manuel Lizondro Garcia was served with process on January 19, 2022, and neither appeared nor answered this action despite

<sup>1</sup> Summons + Complaint, NYSCEF Doc. No. 1, at 5.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Exhibit C - Summons & Complaint, NYSCEF Doc. No. 4, at 8.

multiple emails to his attorneys.<sup>4</sup> Defendant Jose Espinoza, despite his initial answer to the lawsuit and plaintiff's exhaustive attempts at service along with emails to Mr. Espinoza, also failed to appear or answer and their time to do so expired.<sup>5</sup> Plaintiff thereafter moved for default judgment. By short form order dated February 27, 2023, this Court indicated that the motion was granted and directed plaintiff to settle an order on notice.<sup>6</sup> The record reflects, however, that no order or judgment was ever settled, signed, or entered. Plaintiff submitted numerous correspondences demonstrating that it made repeated efforts to follow up with the Court regarding settlement of the order.<sup>7</sup>

More than two-and-a-half years later, defendant now seeks to vacate the default—and as no judgment was ever entered, defendant's application is treated as a motion to vacate a default pursuant to CPLR 5015(a)(1) rather than to vacate a judgment. To vacate a default under CPLR 5015(a)(1), a defendant must demonstrate both reasonable excuse for the default and a potentially meritorious defense.<sup>8</sup> The determination of what constitutes a reasonable excuse lies within the Supreme Court's discretion and is made based upon all relevant factors including extent of delay, prejudice to the opposing party, willfulness, and the strong public policy in favor of resolving cases on the merits.<sup>9</sup>

Here, even accepting defendant's excuse of law office failure on account of inadvertently failing to calendar the motion for default, and bearing in mind the public policy of favoring resolution of cases on the merits resulting in a liberal policy for opening defaults, defendant's excuse is insufficient as plaintiff emailed defendant's counsel twice as to whether they would be interposing an answer to the DJ action to no response and defendant's counsel waited more than two and a half years to act to vacate the default despite defendant's serious injuries. Plaintiff also copied defendants and their counsel on their three separate communications to this Court inquiring into the status of their unsigned notice of settlement with proposed order. Such a sequence of conduct can be appropriately characterized as a "serious lack of concerned attention

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<sup>4</sup> Exhibit I – Email – Garcia Inquiry for Answer, NYSCEF Doc. No. 40; Exhibit J – Email-Follow Up for Garcia Answer, NYSCEF Doc. No. 41.

<sup>5</sup> Exhibit K- Affidavit of John Smith, NYSCEF Doc. No. 42.

<sup>6</sup> Order with Notice of Entry [J. Sweeney] 2/27/2023, NYSCEF Doc. No. 56, at 3.

<sup>7</sup> June 11, 2024 Email to the Court, NYSCEF Doc. No. 75; November 19, 2025 Email to Court, NYSCEF Doc. No. 76; December 11, 2025 Letter to Court, NYSCEF Doc. No. 77.

<sup>8</sup> CPLR 5015(a)(1) (McKinney 2026); Young Su Hwangbo v Nastro, 153 AD3d 963, 965 (2017).

<sup>9</sup> Id.

to the progress of this action...for which no reasonable excuse has been offered.”<sup>10</sup> Accordingly, the Court finds that defendant failed to proffer a reasonable excuse for the delay.

Even assuming that defendant had demonstrated a reasonable excuse, defendant has failed to set forth a potentially meritorious defense. The submission by defendant puts forward a supposed meritorious defense to the underlying personal injury action rather than a defense to the action by the insurer for declaratory judgment disclaiming coverage. Specifically, defendant fails to offer a defense to the plaintiff’s assertion that there is no coverage for liability arising from the use of the vehicle by an unauthorized driver, where “SLI does not apply to liability for bodily injury...arising out of any prohibited use of the car as described in paragraph 14” which disclaims coverage if the driver permits the car to be used by “anyone other than an authorized driver”, which could only be an employee if the vehicle is rented from the employer’s corporate account agreement.<sup>11</sup> Accordingly, defendant has not put forth a meritorious defense and defendant’s cross-motion to vacate the default is denied.

Turning to plaintiff’s motion, the Court finds that the plaintiff has established entitlement to a default judgment and notes that although there exists a prior short form order granting the motion, no order or judgment was ever entered. Accordingly, the Court grants the motion herein and directs entry of judgment.

For the above reasons, it is hereby

**ORDERED** that the defendant’s cross motion to vacate the default pursuant to CPLR 5015(a) is denied; and it is further

**ORDERED** that if the plaintiff’s motion for a default judgment pursuant to CPLR 3215 against Nominal Defendants MANUEL LIZONDRO GARCIA and JOSE ESPINOZA is granted; and it is further

**ADJUDGED, DECLARED, AND DECREED** that (1) defendant Juan Carlos Jimenez Lopez is not an insured under the Policy issued by ACE American; (2) plaintiff Ace is not

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<sup>10</sup> *Burlew-Watkins v. Wood*, 225 AD2d 973, 974 (1996).

<sup>11</sup> Summons + Complaint, NYSCEF Doc. No. 1, at 5-7.

obligated to indemnify or defend defendant Juan Carlos Jimenez Lopez, in the Underlying Action, and; (3) plaintiff Ace is not obligated to pay any damages which may be awarded against defendant Juan Carlos Jimenez Lopez in the Underlying Action.

This constitutes the Decision and Order of the Court.

Dated: 4/29/26



**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020