

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Davidoff Hutcher & Citron LLP v. McLendon

2026 NY Slip Op 01300 · No. Index No. 653409/23; Appeal Nos. 6022-6023-6024; Case Nos. 2025-01582, 2025-01987, 2025-02701 · Decided March 10, 2026

SUMMARY

The New York Appellate Division, First Department, affirmed a judgment awarding Davidoff Hutcher & Citron LLP \$178,200.10 against Eric C. McLendon and affirmed the denial of McLendon's motion to vacate summary judgment. The court held that McLendon failed to establish a meritorious defense because his attorney's affirmation lacked personal knowledge and supporting evidence, and it dismissed related appeals as subsumed, taken from a nonappealable paper, or otherwise unavailable.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Kennedy, J.; Friedman, J.; Mendez, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 10, 2026
DOCKET	Index No. 653409/23; Appeal Nos. 6022-6023-6024; Case Nos. 2025-01582, 2025-01987, 2025-02701
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment entered after plaintiff obtained summary judgment on default and from orders concerning the summary judgment motion and defendant's motion to vacate. The Appellate Division affirmed the judgment, dismissed one appeal as subsumed in the judgment appeal, and dismissed another as taken from a nonappealable paper.
STANDARD OF REVIEW	Abuse of discretion for the denial of a motion to vacate under CPLR 5015(a)(1); review of the appealability of orders entered on default under CPLR 5511.
PRECEDENTIAL VALUE	published
PARTIES	Eric C. McLendon v. Davidoff Hutcher & Citron LLP

TOPICS

summary judgment

default

appellate procedure

appellate jurisdiction

evidence

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether the appeal from the summary judgment order entered on default was permissible.
2. Whether Supreme Court providently exercised its discretion in denying defendant's motion to vacate the summary judgment order under CPLR 5015(a)(1).
3. Whether defendant established a meritorious defense to support vacatur despite asserting a reasonable excuse for failing to oppose summary judgment.
4. Whether evidence submitted for the first time on reply should be considered.

HOLDINGS

1. An order granting summary judgment on default is not appealable where the motion was granted without opposition and the parties treated the order as entered upon default.
2. A motion to vacate under CPLR 5015(a)(1) may be denied when the movant fails to establish a meritorious defense, even assuming the movant demonstrated a reasonable excuse for the default.
3. An attorney affirmation that is not based on personal knowledge and is unsupported by documentary evidence does not constitute competent evidence to establish a meritorious defense.
4. The court properly declined to consider evidence submitted for the first time on reply.

KEY QUOTATIONS

*“This Court may not review the summary judgment order itself, as it was granted without opposition, the parties treated it as entered upon default, and no appeal lies from an order entered on default” (at *1)*

*“Absent a showing of a meritorious defense, the court did not abuse its discretion in denying his motion to vacate the judgment in the interests of substantial justice” (at *1)*

FACTUAL BACKGROUND

Plaintiff obtained a summary judgment order on default and a judgment in the amount of \$178,200.10. Defendant sought to vacate the summary judgment order, asserting through his attorney that plaintiff had overbilled him. The attorney's affirmation was not based on personal knowledge and was unsupported by attached evidence, while additional evidence was submitted for the first time on reply.

PROCEDURAL HISTORY

Supreme Court, New York County, entered a judgment for plaintiff in the amount of \$178,200.10 after granting plaintiff's motion for summary judgment on default. Supreme Court later denied defendant's motion to vacate the

summary judgment order. The First Department affirmed the judgment, dismissed the appeal from the related order as subsumed in the judgment appeal, and dismissed the appeal from the default summary judgment order as taken from a nonappealable paper.

DISPOSITION

affirmed

CASES CITED

- Matter of Neil F. J. v. Maria I. M., 208 A.D.3d 1101, 1101 (1st Dep't 2022)
- Figueroa v. Luna, 281 A.D.2d 204, 205 (1st Dep't 2001)
- Liparulo v. New York City Health & Hosps. Corp., 193 A.D.3d 593, 594 (1st Dep't 2021), leave dismissed, 37 N.Y.3d 1088 (2021)
- Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 68 (2003)

OPINION

Davidoff Hutcher & Citron LLP v. McLendon 2026 NY Slip Op 01300

PER CURIAM.

Davidoff Hutcher & Citron LLP v McLendon (2026 NY Slip Op 01300) Davidoff Hutcher & Citron LLP v McLendon 2026 NY Slip Op 01300 Decided on March 10, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 10, 2026 Before: Renwick, P.J., Kennedy, Friedman, Mendez, Hagler, JJ. Index No. 653409/23|Appeal No. 6022-6023-6024|Case No. 2025-01582, 2025-01987, 2025-02701| [*1]Davidoff Hutcher & Citron LLP, Plaintiff-Respondent, v Eric C. McLendon, Defendant-Respondent. Law Offices of Albert Van-Lare, New York (Albert Van-Lare of counsel), for appellant. Davidoff Hutcher & Citron LLP, New York (Joseph N. Polito of counsel), for respondent. Judgment, Supreme Court, New York County (Lyle E. Frank, J.), entered April 23, 2025, in plaintiff's favor and against defendant in the amount of \$178,200.10, and brining up for review an order, same court and Justice, entered on or about March 5, 2025, which denied defendant's motion to vacate a February 3, 2025 order, same court and Justice, granting plaintiff's motion for summary judgment, unanimously affirmed, without costs. Appeal from aforesaid order, unanimously dismissed, without costs, as subsumed in the appeal from the judgment. Appeal from the February 3, 2025 order, which, in effect, granted plaintiff's motion for summary judgment on default, unanimously dismissed, without costs, as from a nonappealable paper. This Court may not review the summary judgment order itself, as it was granted without opposition , the parties treated it as entered upon default, and no appeal lies from an order entered on default (CPLR 5511; Matter of Neil F. J. v Maria I. M. , 208 AD3d 1101 , 1101 [1st Dept 2022]). As for the motion to vacate the summary judgment order, the court providently exercised

its discretion in denying defendant's motion (CPLR 5015[a][1]). Assuming that defendant established a reasonable excuse for his failure to respond to the summary judgment motion, he failed to establish a meritorious defense. Defendant relied upon his attorney's affirmation, which was not based on his personal knowledge and did not attach any evidence to support his statements about plaintiff's purported overbilling and thus, did not constitute competent evidence (*id.* ; see *Figueroa v Luna* , 281 AD2d 204, 205 [1st Dept 2001]). The court properly declined to consider the evidence defendant furnished for the first time on reply (see *Liparulo v New York City Health & Hosps. Corp.* , 193 AD3d 593, 594 [1st Dept 2021], lv dismissed 37 NY3d 1088 [2021]). Absent a showing of a meritorious defense, the court did not abuse its discretion in denying his motion to vacate the judgment in the interests of substantial justice (see *Woodson v Mendon Leasing Corp.* , 100 NY2d 62, 68 [2003]). We have considered defendant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 10, 2026