

**Ordaz v Paul Maslin Co. LLC**

2025 NY Slip Op 33631(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 154480/2023

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

-----X

JESUS ORDAZ,

Plaintiff,

- v -

PAUL MASLIN CO. LLC, MIRMAR MANAGEMENT CORP.,  
YUMMILICIOUS DELI CORP, THE CITY OF NEW YORK,  
MIRIMAR MANAGEMENT CORP.

Defendant.

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INDEX NO. 154480/2023  
MOTION DATE 09/19/2025  
MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to VACATE DEFAULT.

Defendant Yummilicious Deli Corp. (“Defendant”) moves pursuant to CPLR §§ 5015(a)(1) and 317 for an order vacating this court’s decision and order dated April 16, 2025, which granted a default judgment in favor of Plaintiff against Defendant. Defendant further seeks to have its answer, annexed to its motion papers, deemed served *nunc pro tunc*, and requests such other and further relief as the court deems just and proper.

**BACKGROUND AND PROCEDURAL HISTORY**

This personal injury action arises out of a trip-and-fall accident allegedly sustained by Plaintiff on a broken sidewalk abutting premises leased to Defendant for use as a grocery store. The action was commenced by the filing of a summons and complaint, with service effectuated on Defendant by service upon the Secretary of State pursuant to Business Corporation Law § 306.

Defendant did not timely appear or answer, and on April 16, 2025, this court granted Plaintiff’s motion for default judgment. Prior to that, on October 4, 2023, the court had denied an earlier application for default judgment on the ground that Plaintiff’s affidavit of merit was insufficient.

Upon learning of the action in June 2025, through its insurance broker, Defendant immediately retained counsel, who filed an answer on Defendant’s behalf and moved promptly to vacate the April 16, 2025 order. Defendant now argues that its failure to appear was excusable, that it lacked notice of the summons in time to defend, and that it possesses meritorious defenses to Plaintiff’s claims.

## ARGUMENT

Defendant contends that its default was not willful but the product of lack of actual notice of service, as process was served only on the Secretary of State and not forwarded in time to Defendant. Citing CPLR §§ 5015(a)(1) and 317, Defendant argues that it has both a reasonable excuse and a meritorious defense.

Specifically, Defendant points to lease provisions which place sidewalk repair obligations upon the landlord, not the tenant, unless the tenant created the defect through its own actions or special use. Defendant cites extensive case law, including *Collado v. Cruz*, 81 AD3d 542 (1st Dept 2011), *Tucciarone v. Windsor Owners Corp.*, 306 AD2d 162 (1st Dept 2003), and *Espinal v. Melville Snow Contrs.*, 98 NY2d 136 (2002), for the principle that a tenant's contractual obligation to maintain a sidewalk does not, without more, impose tort liability to third parties.

Defendant further asserts that Plaintiff has not alleged that Defendant created the condition, engaged in any special use of the sidewalk, or made negligent repairs. Defendant emphasizes that public policy strongly favors adjudication of disputes on the merits rather than by default, particularly where there is no prejudice to Plaintiff, discovery has not yet commenced, and Defendant acted promptly upon learning of the action.

## DISCUSSION

### I. Legal Standard

A motion to vacate a default judgment may be brought under CPLR § 5015(a)(1) upon a showing of (1) a reasonable excuse for the default, and (2) a meritorious defense (*see Adefioye v. Volunteers of America, Inc.*, 222 AD2d 246 [1st Dept 1995]). The burden rests with the movant to establish both prongs (*see Marks v. Vigo*, 303 AD2d 306 [1st Dept 2003]; *Tejada v. 750 Gerard Props. Corp.*, 272 AD2d 124 [1st Dept 2000]).

Similarly, CPLR § 317 provides that a defendant served other than by personal delivery may defend within one year of obtaining knowledge of entry of the judgment upon a showing that it did not personally receive notice of the summons in time to defend and has a meritorious defense. Service on a corporation through delivery of process to the Secretary of State is not personal delivery under CPLR § 318 (*Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co.*, 67 NY2d 138 [1986]).

The determination of what constitutes a reasonable excuse rests in the sound discretion of the court (*Rodgers v. 66 E. Tremont Hgts. Hous. Dev. Fund Corp.*, 69 AD3d 510 [1st Dept 2010]). In exercising that discretion, courts consider factors including the length of delay, prejudice to the opposing party, willfulness of the default, and the strong policy favoring resolution of disputes on the merits (*Harcztark v. Drive Variety, Inc.*, 21 AD3d 876 [2d Dept 2005]).

### II. Reasonable Excuse

Here, Defendant has demonstrated a reasonable excuse for its default. Service was effected solely through the Secretary of State, and Defendant did not receive actual notice until its insurance broker alerted it to the default judgment in June 2025. Courts have repeatedly recognized that lack of actual notice due to reliance on Secretary of State service constitutes a reasonable excuse (*see Eugene Di Lorenzo, Inc.*, 67 NY2d at 141, *surpa*; *Raoul Charbonneau Custom Logging, Inc. v. Belanger*, 111 AD2d 583 [3d Dept 1985]).

Defendant acted expeditiously once it became aware of the default, promptly retaining counsel and filing an answer. There is no evidence of willful neglect or intentional disregard of the court's authority. Moreover, discovery has not commenced, and Plaintiff has not alleged any prejudice from vacatur.

### III. Meritorious Defense

Defendant has also established a meritorious defense. To satisfy this requirement, a movant need not prove its defense in full but must demonstrate facts sufficient to show a potentially meritorious defense exists (*Matter of Toyota Motor Credit Corp. v. Impressive Auto Ctr., Inc.*, 80 AD3d 861 [3d Dept 2011]).

Defendant's primary defense is that it owed no duty to Plaintiff under New York law. The abutting property owner, not the tenant, bears the nondelegable statutory duty to maintain the sidewalk in a reasonably safe condition (New York City Admin. Code § 7-210). Absent proof that Defendant created the condition, negligently repaired it, or derived a special use from the sidewalk, liability does not attach (*Espinal*, 98 NY2d 136, *supra*; *Collado*, 81 AD3d 542, *supra*; *Tucciarone*, 306 AD2d 162, *supra*).

The lease provisions annexed to Defendant's motion confirm that sidewalk obligations are limited to repairs necessitated by the tenant's own acts, and do not displace the landlord's statutory duty. As the Court of Appeals has made clear, lease obligations do not, without more, give rise to tort liability to third parties (*Eaves Brooks Costume Co. v. Y.B.H. Realty Corp.*, 76 NY2d 220 [1990]; *see also Palka v. Servicemaster Mgt. Servs. Corp.*, 83 NY2d 579 [1994][existence of duty is a question of law and not inferred from private contract absent comprehensive assumption of responsibility]).

Here, there is no allegation or evidence that Defendant created the alleged defect, made negligent repairs, or used the sidewalk for a special purpose. This case falls squarely within the well-settled rule that tenants are not liable to third parties for sidewalk defects unless they affirmatively contributed to the condition (*Abramson v. Eden Farm, Inc.*, 70 AD3d 514 [1st Dept. 2010]; *Berkowitz v. Dayton Constr., Inc.*, 2 AD3d 764 [2d Dept 2003]).

### IV. Public Policy and Discretion

Finally, public policy strongly favors resolution of disputes on the merits (*see Gibbs v. St. Barnabas Hosp.*, 16 NY3d 74 [2010]). Where, as here, the default was neither willful nor prejudicial, and the movant has demonstrated both excusable default and a meritorious defense, the court's discretion should be exercised to vacate the default judgment.

For the reasons set forth above, Defendant Yummilicious Deli Corp. has demonstrated both a reasonable excuse for its default and a meritorious defense to Plaintiff's claims. The balance of factors, including the absence of prejudice, the promptness of Defendant's response, and the strong public policy favoring adjudication on the merits, all warrant vacatur.

Accordingly, it is hereby

ORDERED that Defendant's motion to vacate the decision and order dated April 16, 2025 is GRANTED in its entirety; and it is further

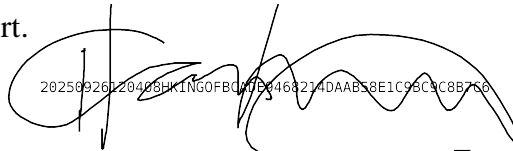
ORDERED that the answer annexed to Defendant's motion is deemed served *nunc pro tunc*; and it is further

ORDERED that Defendant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the parties shall appear for a preliminary conference in the Differentiated Case Management Part, Room 103, at the courthouse located at 80 Centre Street, New York, New York, on Tuesday October 28, 2025, at 2:00 P.M.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

9/26/2025

DATE

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