

**120-120 1/2 First LLC v City Bev. NY LLC**

2025 NY Slip Op 33664(U)

September 24, 2025

Supreme Court, New York County

Docket Number: Index No. 650210/2022

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

120-120 1/2 FIRST LLC,

Plaintiff,

- v -

CITY BEV. NY LLC D/B/A BUBBLEOLOGY, SOLOMON  
SCONIERS, HAI YING LI

Defendant.

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INDEX NO. 650210/2022

MOTION DATE 02/06/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

Plaintiff, 120-120 1/2 First LLC, commenced the underlying action to recover for amounts allegedly owed by defendant, City Bev. NY LLC, d/b/a Bubbleology, pursuant to a commercial lease agreement and alleging claims for breach of lease agreement and attorneys' fees. Plaintiff now moves for an order, pursuant to CPLR § 3215, granting and directing entry of a default judgment, in favor of plaintiff and against defendant, City Bev. NY LLC, d/b/a Bubbleology, in the amount of \$141,047.22 plus interest, and against defendants, Solomon Sconiers and Hai Ying Li, in the amount of \$111,696,16 plus interest, costs and disbursements.

Defendants have cross-moved for an order, pursuant to CPLR § 3215(c), dismissing the action based on plaintiff's failure to seek a default judgment within the statutory time frame or, in the alternative, granting defendants leave to file a late answer. For the reasons set forth below, the plaintiff's motion for a default judgment is denied and the defendants' cross-motion is granted in part.

Plaintiff first commenced the underlying action by filing the summons and complaint on or around January 10, 2022 (NYSCEF Doc. No. 1), and, in accordance with Limited Liability Company Law 303, served defendant City Bev. NY LLC, d/b/a Bubbleology with the above papers on January 18, 2022 (NYSCEF Doc. No. 2). On or around February 25, 2022, defendant City Bev. NY LLC, d/b/a Bubbleology filed an answer to the complaint (NYSCEF Doc. No. 5).

Thereafter, on or around February 9, 2023, plaintiff then moved for an order (Motion Sequence 001), pursuant to CPLR § 3025(b), seeking leave to amend the complaint and add Solomon Sconiers, Jr. and Hai Ying Li as defendants in the action (NYSCEF Doc. No. 10). In accordance with the Decision and Order of this Court, issued by the Hon. Lucy Billings and dated September 8, 2023, the plaintiff's motion was granted without opposition, and the amended complaint was to be deemed served upon service of a copy of the Order, with notice of entry, and the newly added defendants were directed to serve an answer to the amended complaint within 30-days of said service (NYSCEF Doc. No. 26). Accordingly, on October 10, 2023, plaintiff filed a notice of entry (NYSCEF Doc. No. 27) and three affidavits of service demonstrating that: (1) on October 12, 2023, the amended complaint was served upon City Bev. NY LLC, d/b/a Bubbleology by mail to its counsel (NYSCEF Doc. No. 29); (2) on October 23, 2023, the amended complaint was served upon "SOLOMON SOONIERS JR" by delivering and/or leaving copies of the pleadings with a person of suitable age and discretion and mailing the same on November 2, 2023 (NYSCEF Doc. No. 30); and (3) on November 2, 2023, the amended complaint was served upon "HAI YING LI" by delivering and/or leaving copies of the pleadings with a person of suitable age and discretion and mailing the same on November 3, 2023 (NYSCEF Doc. No. 31).

Under CPLR § 3215(a), when a defendant fails to appear, plead, or proceed to trial in an action, a plaintiff may seek a default judgment against them. As the individual defendants were served pursuant to CPLR § 308(2), in accordance with CPLR § 320(a), defendants were required to answer or otherwise appear within thirty (30) days after this service was complete. Here, defendants ought to have appeared or answered by December 13, 2023, but defendants failed to do so. Thereafter, on or around February 5, 2025, plaintiff filed its application seeking entry of a default judgment against the defendants. However, as plaintiff's motion was filed approximately 14-months after the defendants' default, it was not made within the applicable one-year period required by the statute.

As set forth under CPLR § 3215(c), “[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed”. The language of CPLR § 3215(c) requiring dismissal is not discretionary but mandatory, with the statute excepting cases where sufficient cause has been shown (*Deutsche Bank Natl. Tr. Co. v Cruz*, 173 AD3d 610, 610 [1st Dept 2019]). To establish sufficient cause, the plaintiff is required to set forth both a reasonable excuse for the delay and demonstrate that it has a meritorious cause of action (*Selective Auto Ins. Co. of New Jersey v Nesbitt*, 161 AD3d 560 [1st Dept 2018]; *HSBC Bank USA, N.A. v Slone*, 174 AD3d 866, 867 [2d Dept 2019]). The determination of whether an excuse is reasonable in any given instance is committed to the sound discretion of the motion court (*Pipinias v J. Sackaris & Sons, Inc.*, 116 AD3d 749, 752 [2d Dept 2014]).

Here, the plaintiff's motion was filed almost two months after the expiration of the statutory time-period for which it was required to seek entry of a default judgment. In support of

the motion, plaintiff's counsel acknowledged that the application was untimely and relies on law office failure as the reason for the delay. Upon certain terms or in certain circumstances, law office failure may constitute a reasonable excuse (*Hertz Vehicles, LLC v Mollo*, 171 AD3d 651 [1st Dept 2019]; *Rivera v New York City Dept. of Sanitation*, 142 AD3d 463, 464 [1st Dept 2016]). Here, plaintiff's counsel has included an affirmation detailing a "glitch" with its electronic case management system and has provided email correspondence with defendants' counsel during this time period demonstrating a lack of intent to abandon the action (*see Park v Kim*, 205 AD3d 429, 429 [1st Dept 2022]; NYSCEF Doc. No. 47). Additionally, plaintiff has demonstrated that the complaint is potentially meritorious, offering an affidavit of facts and additional supporting documentation regarding its claims (*see Citimortgage, Inc. v Sahai*, 172 AD3d 552 [1st Dept 2019]; NYSCEF Doc. No. 35-41).

Additionally, defendants' counsel has similarly provided submissions demonstrating previous participation and efforts showing an intent to defend and/or litigate the action (NYSCEF Doc. No. 58-62). Therefore, in light of the strong public policy of this state to dispose of cases on their merits, the lack of circumstances demonstrating the defendants' delay was willful, and that there has been no showing of prejudice, the defendants may be granted leave to file a late answer (*see HSBC USA v Lugo*, 127 AD3d 502, 503 [1st Dept 2015]).

Accordingly, it is hereby

ORDERED that the plaintiff's motion for a default judgment is DENIED; and it is further

ORDERED that the cross-motion by defendants is GRANTED IN PART, to the limited extent that defendants are granted leave to serve an answer to the amended complaint but is otherwise DENIED; and it is further

ORDERED that the verified answer to the amended complaint filed under NYSCEF Doc. No. 61, and/or in the form annexed to the cross-motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 327, 80 Centre Street, on November 13, 2025, at 2:15 PM.

This constitutes the decision and order of the court.



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9/24/2025  
**DATE**

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**NICHOLAS W. MOYNE, J.S.C.**

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: