

Franklin BH LLC v Iuliano

2025 NY Slip Op 33837(U)

October 8, 2025

Supreme Court, New York County

Docket Number: Index No. 150396/2024

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

FRANKLIN BH LLC

Plaintiff,

- v -

MICHELE IULIANO,

Defendant.

-----X

INDEX NO. 150396/2024

MOTION DATE 06/06/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

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

Upon the foregoing documents, it is

Plaintiff, Franklin BH LLC, commenced the underlying action to recover for amounts allegedly owed by defendant, Michele Iuliano a/k/a Michele Luliano, pursuant to a personal guaranty agreement executed by the defendant and alleging claims for breach of guaranty agreement and account stated. 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, Michele Iuliano a/k/a Michele Luliano, in the amount of \$1,856,989.94, plus interest from October 1, 2019, costs and disbursements, and attorneys' fees.

Defendant has cross-moved for an order, pursuant to CPLR §§ 3012(d) and 2004, granting leave to file a late answer in this action. For the reasons set forth below, the plaintiff's motion for a default judgment is denied and the cross-motion may be granted.

Plaintiff first commenced the underlying action by filing the summons and complaint on or around January 16, 2024 (NYSCEF Doc. No. 1), and, on March 4, 2024, in accordance with the method of service provided under CPLR § 308(2), plaintiff personally served the defendant

with the summons and complaint in this action by delivering and leaving a copy of the pleadings with a person of suitable age and discretion and on March 9, 2024, mailing copies of the same (NYSCEF Doc. No. 2). On or around April 10, 2024, a notice of appearance was filed by defendant's counsel (NYSCEF Doc. No. 3), but thereafter, no answer was filed.

On June 6, 2024, plaintiff filed its application seeking entry of a default judgment based on defendant's default in responding to the complaint. The defendant's time by which to respond to the plaintiff's motion was extended and/or the return date was adjourned until August 2024 (NYSCEF Doc. No. 18). Accordingly, on August 23, 2024, defendant filed its cross-motion to file and compel acceptance of a late answer.

Under CPLR § 3012(d), an extension of time to appear and plead may be granted "upon such terms as may be just and upon a showing of reasonable excuse for delay or default." Here, an extension of time and compelling acceptance of the defendant's answer is warranted under the circumstances. "The determination whether a reasonable excuse has been offered is sui generis and should be based on all relevant factors, among which are the length of the delay chargeable to the movant, whether the opposing party has been prejudiced, whether the default was willful, and the strong public policy favoring the resolution of cases on the merits" (*Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411, 413-14 [1st Dept 2011]).

Here, defendant's counsel has sufficiently established a reasonable excuse for the default or delay. In the affirmation in support of the cross-motion and in opposition to the plaintiff's motion, defendant's counsel, a solo practitioner, has included detailed allegations as to health issues and personal matters which contributed to the delay and resulted in the failure to timely file an answer (NYSCEF Doc. No. 26). A delay in filing an answer that was occasioned by law office failure may constitute a reasonable excuse or "good cause" for the delay (*Velasquez v New*

York City Tr. Auth./MTA, 198 AD3d 555, 556 [1st Dept 2021]; *Hertz Vehicles, LLC v Mollo*, 171 AD3d 651 [1st Dept 2019]). Plaintiff has not opposed the defendant's cross-motion and thus has not argued or otherwise established it was prejudiced as a result of the delay (*Hertz Vehicles, LLC v Mollo*, 171 AD3d 651 [1st Dept 2019]; *Camille v Fedn. of Prot. Welfare Agencies, Inc.*, 233 AD3d 747, 748 [2d Dept 2024], *lv to appeal denied*, 43 NY3d 905 [2025]). Additionally, the delay in answering was relatively short, there is no evidence of willfulness on behalf of the defendant, and there is a strong public policy in favor of resolving cases on the merits (*Pichardo v 969 Amsterdam Holdings, LLC*, 176 AD3d 571, 572 [1st Dept 2019]). Finally, "[b]ecause no default judgment had yet been entered, defendant[] [was] not required to demonstrate a meritorious defense" (*Epstein Becker & Green, P.C. v Samson Mgt. LLC*, 188 AD3d 454, 455 [1st Dept 2020]). Considering, the plaintiff's motion for a default judgment is denied, and the cross-motion may be granted.

Accordingly, it is hereby

ORDERED that the plaintiff's motion seeking entry of a default judgment against the defendant is DENIED; and it is further

ORDERED that the cross-motion by defendant to file a late answer is GRANTED; and it is further

ORDERED that the defendant's proposed answer, 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, New York, New York 10013 on December 11, 2025, at 2:15 PM.

This constitutes the decision and order of the court.


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10/8/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

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