

Ahmed v Ahmed

2025 NY Slip Op 34113(U)

October 24, 2025

Supreme Court, New York County

Docket Number: Index No. 653463/2024

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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SHOGY AHMED,

Plaintiff,

- v -

HAYTHAM AHMED, SHOGY MARKETPLACE
CORP. d/b/a MANHATTAN MARKETPLACE, and
SALEH SALEH,

Defendants.

INDEX NO. 653463/2024

MOTION DATES 10/01/2025,
10/17/2025

MOTION SEQ. NOS. 003, 005

DECISION + ORDER ON MOTIONS

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49–56, 64–65 were read on this motion to/for VACATE.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 61–63 were read on this motion to/for EXTEND – TIME.

On August 4, 2025, the Court issued a Court Notice directing the parties to provide a status letter to the Court within fourteen days; Plaintiff failed to file such a letter or to respond to outreach from Defendants’ counsel. NYSCEF Doc. No. 43. On August 20, 2025, the Court issued a further Court Notice directing the parties to appear for an in-person conference on August 28, 2025; counsel for Plaintiff did not appear at this conference or otherwise contact the Court. NYSCEF Doc. Nos. 46, 47. In both instances, the Court had advised the parties that failure to comply with the relevant order would result in adverse outcomes, including dismissal of claims. Consequently, on September 24, 2025, the Court issued a Decision and Order dismissing Plaintiff’s claims in this action for failing to appear or to comply with the Court’s orders. NYSCEF Doc. No. 48. Plaintiff filed a motion to vacate this Decision and Order on October 1, 2025 (Motion 003), which Defendants oppose.

By the same Decision and Order, the Court denied Defendants’ Cross-Motion for Default Judgment against Plaintiff with leave to renew on or before October 8, 2025. On the appointed deadline, Defendants filed a motion (Motion 004) seeking an extension of time under CPLR § 2004 to file their renewed motion for default judgment. NYSCEF Doc. No. 57. On October 10, 2025, the Court denied Defendants’ motion for an extension of time for failure to specify the “exact relief sought” (*i.e.*, the “precise length of the extension sought”), but granted leave to renew the motion on or before October 17, 2025. NYSCEF Doc. No. 60. Defendants subsequently filed a renewed motion for extension of time (Motion 005), renewing their earlier motion seeking an

extension of time to file the renewed motion for default judgment. Plaintiff has submitted no opposition to Defendants' motion.

Motion to Vacate

This matter was originally assigned to Justice Margaret Chan and was reassigned to the undersigned on August 4, 2025. NYSCEF Doc. No. 43 (Notification regarding case reassignment to Justice Patel). Plaintiff's counsel asserts in his affidavit that, prior to the reassignment of this matter, he and Defendants' counsel "would receive email messages directly" from Justice Chan's chambers staff advising them "regarding upcoming motion hearings and any requests from chambers."¹ NYSCEF Doc. No. 50. However, counsel claims that, prior to the August hearing (and following the reassignment of this matter), his office "did not receive any electronic or written notice, from the court or from our adversary, that the hearing was scheduled." Plaintiff's counsel therefore attributes his failure to respond to the August 4 and August 20, 2025 Court Notices, as well as his failure to appear for the August 28, 2025 hearing, to the absence of e-mailed notices from court staff after the reassignment of this matter. Plaintiff's counsel further blames Defendants' counsel, who had "previously been very communicative," for failing to advise him that the Court had scheduled a conference for August 28, 2025. Finally, Plaintiff's counsel contends that his office "did not receive by mail or email any ECF/NYSCEF updates on the case jacket from the Court directly."²

Under CPLR § 5015(a)(1), a court "may relieve a party from" a judgment or order on the ground of "excusable default." "A party seeking relief under CPLR § 5015(a)(1) must demonstrate a reasonable excuse for his or her default and a meritorious claim and defense, as the case may be." *60 E. 9th St. Owners Corp. v. Zihenni*, 111 A.D.3d 511, 512 (1st Dept. 2013). Here, Plaintiff fails to establish a reasonable excuse for their default.

Plaintiff's counsel provides no explanation for why he purportedly did not receive notifications from NYSCEF. He acknowledges that he previously (and successfully) received e-mails from court staff regarding this matter at a particular e-mail address.³ See NYSCEF Doc. No. 55 ("Emails with Justice Chan Clerk and Part Clerk"). The e-mail address that Plaintiff's counsel registered on NYSCEF in this matter is the *same e-mail address* that he uses in the e-mail communications he offers as support.

Even if it is true that Plaintiff's counsel has not been receiving notifications from NYSCEF with his registered e-mail address, he provides no explanation for why—over a year into this

¹ The Court notes that Plaintiff failed to file a memorandum of law in support of its motion, in violation of this Court's Part Rules. Despite this error, the Court finds it appropriate to address the substance of Plaintiff's motion, due to "the strong public policy favoring the resolution of cases on the merits." *Chevalier v. 368 E. 148th St. Assocs., LLC*, 80 A.D.3d 411, 414 (1st Dept. 2011).

² Plaintiff's counsel also alleges that, "[e]ven if we had been advised of the hearing, my office would not have been able to attend" due to their prior engagement at an ongoing trial in the Superior Court of New Jersey. This separate engagement is concededly neither the proximate nor actual cause of Plaintiff's default, and is therefore irrelevant to the consideration of Plaintiff's motion.

³ The Court refrains from identifying counsel's email address out of an abundance of caution and concern for privacy considerations.

case—he is only now raising the issue. Regardless, it is the fundamental responsibility of counsel to monitor the dockets in their cases. *See Kihl v. Pfeffer*, 94 N.Y.2d 118, 123 (1999) (“If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity.”). Plaintiff’s counsel’s attempt to shirk responsibility for his failure in this regard and transfer the blame to court staff or—even more bewilderingly—to opposing counsel is inexcusable.⁴

Altogether, Plaintiff’s counsel’s “denial of receipt” of the Court Notices “is the only excuse he offers for his failure to attend the status conference” on August 28, 2025. *Zihenni*, 111 A.D.3d at 512. “Such a denial is insufficient to overcome the presumption of delivery,” and “is also insufficient as a reasonable excuse as a matter of law.” *Id.* at 512–13. “Absent a reasonable excuse, vacatur is not appropriate regardless of whether [the party] has a meritorious [claim or defense].” *Citibank, N.A. v. K.L.P. Sportswear, Inc.*, 144 A.D.3d 475, 476–77 (1st Dept. 2016). Consequently, Plaintiff’s motion is denied.⁵

Motion for Extension of Time

Defendants seek an extension of the deadline to file their renewed motion for default judgment until December 1, 2025. Defendants assert that, in order to substantiate their counterclaims with the factual support necessary to address the deficiencies identified in the Court’s September 24, 2025 Decision and Order, they require a revised affidavit from Defendant Saleh Saleh, who “has first-hand personal knowledge” of the relevant facts underlying these counterclaims. However, Mr. Saleh is currently traveling in the Middle East, and will be “returning to the United States later in the year.” Furthermore, English is not Mr. Saleh’s first language. These challenges have complicated Defendants’ counsel’s efforts to obtain the relevant facts from Mr. Saleh. Defendants further argue that the process of executing and authenticating an affidavit overseas “requires additional time, including coordination with foreign notarial authorities, translation of supporting documents, apostille/consular authentication, and courier transmission of originals.” Consequently, Defendants seek a “short, defined extension,” which they assert will impose no prejudice on Plaintiff.⁶

⁴ Even the e-mail communications that Plaintiff’s counsel provides in an attempt to substantiate their motion only further demonstrate counsel’s fecklessness. The last e-mail that counsel received from Justice Chan’s chambers staff prior to reassignment of this matter (NYSCEF Doc. No. 55) advised him to “contact[] the part which takes over when this action has been reassigned to discuss future scheduling,” which counsel failed to do.

⁵ In opposing Plaintiff’s Motion, Defendants cite to an abundance of cases that do not appear to exist: *Goldstein v. Barron*, *Matter of Lussier v. Lussier*, *Vidal v. Mena*, *Centeno v. Valenti*, *Pinto v. House of Diamonds*, *Byrne v. Cerasaro*, and *Smith v. Johnson*. Other citations are completely inaccurate, e.g., those for *Cippitelli v. Town of Niskayuna*, *Pena v. Mittleman*, and *Martinez v. State of New York*. Particularly given the ongoing trend of artificial intelligence misuse in the legal profession, Defendants’ counsel is advised in the most emphatic terms to diligently review the submissions they make to the Court for accuracy, as failure to do so entails frivolous conduct that may warrant an award of sanctions. *See generally Ader v. Ader*, 87 Misc. 3d 1213(A) (N.Y. Sup. Ct. 2025).

⁶ Defendants also claim—incorrectly—that the Court “set no strict renewal deadline.” The Court refers Defendants to the Decision and Order of September 24, 2025 (NYSCEF Doc. No. 48), which clearly directed Defendants to renew their Cross-Motion “on or before October 8, 2025,” and further advised that failure to do so “will result in dismissal of Defendants’ Counterclaims.” Defendants are advised to carefully heed the similar directives set forth in the instant Decision & Order.

Pursuant to CPLR § 2004, “[e]xcept where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.” When considering motions for extensions of time, the court may consider “factors such as the length of the delay, whether the opposing party has been prejudiced by the delay, the reason given for the delay, whether the moving party was in default before seeking the extension, and, if so, the presence or absence of an affidavit of merit.” *Tewari v. Tsoutsouras*, 75 N.Y.2d 1, 11–12 (1989). The court should also consider “the strong public policy favoring the resolution of cases on the merits.” *Chevalier v. 368 E. 148th St. Assocs., LLC*, 80 A.D.3d 411, 414 (1st Dept. 2011); *see also Lauren v. Hotel Pennsylvania*, 232 A.D.3d 473, 474 (1st Dept. 2024) (same).

The Court finds it appropriate to grant the requested extension. Defendants’ request amounts to an extension of less than two months from the original deadline for filing their motion to renew. Under the circumstances, the Court finds that this is not a disproportionately lengthy delay. *See, e.g., Tewari*, 75 N.Y.2d at 13 (granting an extension despite a delay of eight months); *Chevalier*, 80 A.D.3d at 414 (finding a delay of several months constituted a “short delay”). There is also no indication that Plaintiff will be prejudiced by the delay, as Plaintiff’s claims in this action have already been dismissed. Indeed, an extension of time will “provide[] them the opportunity to reply.” *Lauren*, 232 A.D. at 474. On the other hand, Defendants “will be severely prejudiced if the motion is denied.” *Tewari*, 75 N.Y.2d at 13.

Defendants’ rationale for the delay is less clearly substantiated. Given that Defendants only seek to renew their counterclaims for tortious interference with economic relations and intentional infliction of emotional distress, the set of facts that counsel must obtain from Mr. Saleh is necessarily limited—particularly because the intentional infliction of emotional distress counterclaim is brought on behalf of Defendant Haytham Ahmed, not Mr. Saleh. Furthermore, Defendants fail to address why Mr. Saleh cannot execute an affirmation pursuant to CPLR § 2106, which would substantially simplify the process of obtaining the necessary supporting documents for their motion.

Nevertheless, for the reasons set forth above, and considering the public policy favoring resolving disputes on the merits, the Court grants Defendants’ motion. However, no further extensions will be granted.

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Accordingly, it is hereby

ORDERED that Plaintiff’s Motion to Vacate (Motion 003) is DENIED with prejudice; and it is further

ORDERED that Defendants’ Motion for Extension of Time (Motion 005) is GRANTED; and it is further

ORDERED that Defendants shall file their renewed Cross-Motion for Default Judgment against Plaintiff on or before December 1, 2025; Plaintiff shall file their opposition papers on or before December 10, 2025; and Defendants shall file their reply papers on or before December 16, 2025; and it is further

ORDERED that no further extensions of the deadline for Defendants to file their renewed motion will be granted; and it is further

ORDERED that Defendants’ failure to renew their Cross-Motion on or before December 1, 2025 will result in dismissal of Defendants’ Counterclaims.

The foregoing constitutes the Decision and Order of the Court.

October 24, 2025

DATE



ANAR R. PATEL, A.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