

**Urban v Hudson Capital Group Ventures, LLC**

2025 NY Slip Op 34328(U)

November 12, 2025

Supreme Court, New York County

Docket Number: Index No. 651660/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

*Justice*

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RYAN URBAN, GIGI GROUP, LLC

Plaintiff,

- v -

HUDSON CAPITAL GROUP VENTURES, LLC,

Defendant.

-----X

**INDEX NO.** 651660/2023

**MOTION DATE** 08/18/2025

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 77, 78

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, the motion is denied.

**Background**

Plaintiffs filed the underlying suit in April of 2023, alleging in the amended complaint that Defendant breached an engagement letter related to the development of a restaurant and nightclub in the Bowery. Defendant brought a pre-answer motion to dismiss, which was denied. In May of 2024, Plaintiff’s counsel moved to withdraw, which was granted. A compliance conference with this Court was held in September of 2024, at which the then-pro se Plaintiff Urban was directed to file a note of issue before November 30th, 2024. The NOI was not filed by that date. In May of 2025, Defendant served a demand to resume prosecution and to file the note of issue within 90 days. On the 91st day from receipt of the demand, now-represented Plaintiff Urban’s new counsel filed a notice of appearance and a NOI for trial with jury. Defendant rejected the NOI that same day and pointed to perceived flaws in the NOI. On day 93, Plaintiff Urban filed a corrected NOI. The following day, Defendant brought this present motion to strike the NOI and dismiss the complaint for want of prosecution. Plaintiff Urban opposes the motion.

## Discussion

Defendant sent the demand pursuant to CPLR § 3216(b)(3), which states that a party seeking to have a case dismissed for failure to prosecute shall serve written demand to file a NOI within 90 days of receipt of the demand. They move now to strike the late-filed NOI and dismiss the action under CPLR § 3216(e), which states that when a party receives such a demand and fails to file a NOI within 90 days, “the court may take such initiative or grant such motion unless the party shows justifiable excuse for the delay and a good and meritorious cause of action.” Defendant argues that Plaintiff must provide both a reasonable excuse and an affidavit of merits that could succeed on a summary judgment standard in order to avoid dismissal. Plaintiff argues that dismissal under CPLR § 3216(e) is discretionary, points to the one-day delay, and argues that the verified amended complaint is sufficient.

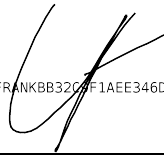
The case law on the standard under CPLR § 3216(e) is somewhat contradictory. The Court of Appeals pointed to the “plain language” of the CPLR and explicitly held that “a court retains some discretion to deny a motion to dismiss, even when plaintiff fails to comply with the 90-day requirement and proffers an inadequate excuse for the delay”, and continued to hold that it was incorrect and “unnecessarily rigid” to say that the Supreme Court lacked discretion absent a showing of reasonable excuse and meritorious cause of action. *Baczowski v. D.A. Collins Constr. Co.*, 89 N.Y.2d 499, 504 [1997]; *see also Di Simone v. Good Samaritan Hosp.*, 100 N.Y.2d 632, 633 [2003] (holding that CPLR § 3216 “is extremely forgiving of litigation delay” and that the effect of subsection (e) is that if a party does offer a justifiable excuse and meritorious of action, then in that case the court no longer retains the discretion to grant a motion to dismiss). But subsequent appellate decisions seem to stand for the proposition instead that a

plaintiff is *required* to provide both a justifiable excuse and a demonstration of a meritorious cause of action. *See, e.g., Jaffe c. Carol Mgmt. Corp.*, 268 A.D.2d 292, 292 [1st Dept. 2000].

Going by the plain language of the CPLR and the binding case law from the Court of Appeals, this Court finds that it retains some discretion under CPLR § 3216(e) to deny a motion to dismiss, even in the absence of a justifiable excuse and a meritorious cause of action. Here, given that the delay consists of a single day, the parties are in agreement that there is no further discovery required, and the cause was meritorious enough to survive a motion to dismiss. Under the circumstances and given the public policy encouraging the disposition of cases on their merits, the Court declines to exercise its discretion to vacate the NOI and dismiss the action. *See Conner v. Brasserie, Inc.*, 136 A.D.2d 481, 481 [1st Dept. 1988] (holding that due to the “strong policy favoring disposition of actions on their merits”, a case should not be dismissed when the NOI was filed a day late and the defendant could not show prejudice).

Furthermore, the Court finds that regardless, there has been a sufficient showing of a justifiable excuse and a meritorious cause of action. During the period following the service of the demand, Plaintiff Urban was in the process of obtaining counsel, and his causes of action were sufficiently meritorious to survive a motion to dismiss. While *Jaffe* seems to stand for the proposition that an affidavit of merit is required to be filed in opposition to a CPLR § 3216 motion, other First Department cases have explicitly held that a verified complaint is sufficient. *Conner* at 481; *see also Solomon Capital, LLC v. Lion Biotechnologies, Inc.*, 194 A.D.3d 502, 503 [1st Dept. 2021] (holding that a verified complaint with detailed allegations “satisfies the requirement of a showing of merit” for a 3216 motion to dismiss). Finally, Plaintiff requests sanctions for the bringing of this motion, which the Court declines to grant. Accordingly, it is hereby

ADJUDGED that the motion is denied.

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11/12/2025  
DATE

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LYLE E. FRANK, 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