

**Halpert v CMNT LLC**

2025 NY Slip Op 34341(U)

November 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 505734/2024

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10 day of November, 2025.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS  
Hon. Carolyn E. Wade, J.S.C.**

-----X  
JOSEPH HALPERT and ETTY HALPERT,

Plaintiff,

-against-

CMNT LLC and MENACHEM DOV ROTH,

Defendants,

-----X

**DECISION AND ORDER**

Index No.: 505734/2024  
Mot. Seq.: 2-3

**Factual Background**

Jospeh Halpert and Ety Halpert, (“Plaintiffs”), seek repayment of a \$200,000 loan, allegedly made between themselves and CMNT LLC and Menachem Dov Roth (“Defendants”). On March 13, 2023, Plaintiffs issued a check payable to “CMNT LLC” which was deposited into CMNT’s business account and used for CMNT’s operations.<sup>1</sup> Defendants assert the loan was made solely to Defendant CMNT, and thus CMNT is liable for repayment. In opposition, Plaintiffs assert the loan is attributable to Defendant Roth personally.

On December 19, 2023, Defendant Roth sent a WhatsApp audio message to Plaintiff’s in which he stated, “[w]hat I discussed with my Rabbi was that, you know, just to put on paper that

<sup>1</sup> See NYSCEF Doc. No. 20.

I owe you the money, not a personal guarantee.”<sup>2</sup> Defendants contend Roth never signed a personal guaranty, thus any alleged oral promise is void under the Statute of Frauds.<sup>3</sup>

### Procedural History

On May 20, 2024, Defendants moved to dismiss the complaint under CPLR §3211(a)(7) (Motion Sequence #1). On April 30, 2025, Defendants’ Motion to Dismiss was marked off the calendar for non-appearance, due to counsel’s alleged surgery. On June 5, 2025, Plaintiffs moved for a Default Judgment (Motion Sequence #2). On July 23, 2025, Defendants cross-moved (Motion Sequence #3) and sought the following relief: (1) vacate the April 30, 2025, default entry, pursuant to CPLR §5015(a); (2) restore the Motion to Dismiss, and upon restoration (3) grant Defendant’s Motion to Dismiss Plaintiffs’ Complaint, pursuant to CPLR §3211(a)7.<sup>4</sup>

### Standards

Under CPLR §5015(a), vacatur requires (1) a reasonable excuse for default and (2) a meritorious position on the underlying matter. The Court considers the length of the delay, prejudice, and the strong public policy favoring dispositions on the merits. “In order to vacate a default in appearing at a conference, the defaulting party must demonstrate both a reasonable excuse for the default and a potentially meritorious cause of action or defense to the action.” See *Beach 28 RE, LLC v. Somra*, 2023 NY Slip Op 02295 (2d Dept 2023) citing *126 Henry St., Inc. v. Cater*, 197 AD3d 598, 600 (2d Dept 2021). However, the Court can decline to vacate the default where the defaulting party fails to demonstrate a both a reasonable excuse and a meritorious defense. See *Wells Fargo Bank, N.A. v. Cean Owens, LLC*, 110 A.D.3d 872 (2d Dep’t 2013) (Counsel’ alleged surgery for non-appearance was unsubstantiated and thus Court declined to vacate default entry for lack of reasonable excuse).

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<sup>2</sup> See NYSCEF Doc. No. 14 Pg. 4. Authenticated transcript of the audio message between parties.

<sup>3</sup> N.Y. Gen. Oblig. Law § 5-701(a). “Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking.”

<sup>4</sup> NSYCEF Doc. No 24, pg 1.

To establish a prima facie entitlement for breach of contract, Plaintiff must proffer “[t]he existence of a contract, Plaintiff’s performance pursuant to the contract, Defendant’s breach of his or her contractual obligations, and damages resulting from the breach.” See *Riccio v. Genworth Fin.*, 184 A.D.3d 590, 591, 124 N.Y.S.3d 370, 372 (2020) quoting *Victory State Bank v. EMBA Hylan, LLC*, 169 A.D.3d 963, 965, 95 N.Y.S.3d 97 (2019).

### Discussion

Defendants’ cross-motion to vacate the default entry, pursuant to CPLR § 5015(a)(2) and (3), is without merit. Here, Defendants failed to establish a reasonable excuse as counsel’s proffered claim of surgery was unsupported and thus legally insufficient. See *Wells Fargo Bank, N.A. v. Cean Owens, LLC*, 110 A.D.3d 872 (2d Dep’t 2013). If construed under CPLR §5015(a)(1), Defendants’ have also failed to identify any new evidence or misconduct to support vacatur.

Plaintiffs have established their prima facie entitlement to Default Judgment, as they submitted the following documents as support: (1) Verified Complaint by Plaintiff Joseph Halpert (NYSCEF Doc. No. 1); (2) Affidavit of Plaintiff Joseph Halpert’s (NYSCEF Doc. No. 13) and; (3) Transcripts of Defendant Roth’s voice recordings in which he admitted liability (NYSCEF Doc. No. 14). The submitted documents establish the elements necessary for a breach of a contract claim—existence of a contract; Plaintiff’s performance under the contract; Defendant Roth’s breach of his contractual obligations, and; damages resulting from the breach. See *Riccio v. Genworth Fin.*, 184 A.D.3d 590, 591, 124 N.Y.S.3d 370, 372 (2020) quoting *Victory State Bank v. EMBA Hylan, LLC*, 169 A.D.3d 963, 965, 95 N.Y.S.3d 97 (2019). Further, Defendant Roth’s authenticated and transcribed WhatsApp audio recordings in which he expressly stated, “[I] owe you the money...” severely undermines Defendant Roth’s claim of a voided contract, as a Statue of Frauds defense. More importantly, Defendants do not dispute the receipt of the \$200,000 check, Plaintiffs’ repeated demands for repayment, nor Defendant’s express admissions, regarding his contractual obligations, made via WhatsApp audio recordings.

Accordingly, it is

**ORDERED** that Defendants' Cross-Motion (Motion Sequence #3) to vacate Defendant's default entry is **DENIED**, pursuant to CPLR §5015(a) and CPLR §2005, as Defendant has not proffered evidence sufficient to support vacatur, and it is further

**ORDERED** that Plaintiffs' Motion for Default Judgment (Motion Sequence #2) is **GRANTED** in its entirety, as Plaintiffs have established judgment against both Defendant CMNT LLC and Defendant Roth, jointly and severally, in the principal sum of Two Hundred Thousand Dollars (\$200,000.00), with statutory interest thereon at nine percent (9%) per annum, from January 8, 2024, as demanded in the Complaint, together with costs and disbursements as taxed by the Clerk upon submission of a Bill of Costs.

**This constitutes the Decision and Order of the Court.**

ENTER:



Hon. Carolyn E. Wade, J.S.C.  
**HON. CAROLYN E. WADE**  
**JUSTICE OF THE SUPREME COURT**

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KINGS COUNTY CLERK  
FILED