

**Marathon Strategies, LLC v Centennial Props. Inc.**

2025 NY Slip Op 34559(U)

November 13, 2025

Supreme Court, New York County

Docket Number: Index No. 656191/2021

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART **42M**

*Justice*

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MARATHON STRATEGIES, LLC	INDEX NO. <u>656191/2021</u>
Plaintiff,	MOTION DATE <u>06/08/2025</u>
- v -	MOTION SEQ. NO. <u>005</u>

CENTENNIAL PROPERTIES INC., F/K/A 9300 REALTY  
MANAGEMENT INC.,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

APPEARANCES:

Relin Goldstein & Crane LLP, Rochester, NY (Kathryn E. Assini, Esq., of counsel), for plaintiff.

Rodriguez & Steinhart PLLC, Massapequa Park, NY (Anthony John Rodriguez, Esq., of counsel), for defendant.

HON. EMILY MORALES-MINERVA, J.S.C.

The Court grants plaintiff MARATHON STRATEGIES, LLC's motion (seq. no. 05), for an order vacating the undersigned's decision and order, dated February 05, 2025, which upon plaintiff's default dismissed this action sounding in breach of contract (see CPLR § 5015 [governing relief from a judgment or order]).<sup>1</sup>

<sup>1</sup> Rule 5015 of the CPLR provides, as relevant here: "(a) The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of: 1. excusable default, if such motion is made

## BACKGROUND

On February 05, 2025, the Court dismissed this action (1) for plaintiff's failure to appear at a time-certain and in-person call of the calendar and (2) for plaintiff's failure to contact the Court with an excuse or request for an adjournment (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 63, Decision and Order, dated February 05, 2025; see also Uniform Civil Rules for the Supreme Court and the County Court [22 NYCRR] § 202.27 [permitting dismissal where, as here, the defendant appears at the call of the calendar, but the plaintiff does not]).<sup>2</sup>

In support of its application to vacate said dismissal, plaintiff contends that it presents a reasonable excuse for the default and a meritorious claim. Defendant CENTENNIAL PROPERTIES INC. F/K/A 9300 REALTY MANAGEMENT INC. submits written opposition, arguing plaintiff's claim has no merit (see NYSCEF Doc. No. 89, affirmation in opposition, dated April 02,

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within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry."

<sup>2</sup> Section 202.27 provides: "At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed immediately or subject to engagement of counsel, the judge may note the default on the record and enter an order as follows: (b) if the defendant appears but the plaintiff does not, the judge may dismiss the action" (emphasis added).

2025).

#### ANALYSIS

"The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

1. excusable default . . ."

(CPLR § 5015 [a]). Further, it is well-settled that courts generally have a "preference for deciding cases on the merits" (Liparulo v New York City Health & Hosps. Corp., 193 AD3d 593, 594 [1st Dept 2021], lv dismissed 37 NY3d 1088 [2021], citing Eisenstein v Rose, 135 AD2d 369, 370 [1st Dept 1987]; see also U.S. Bank N.A. v Zhu, 238 AD3d 628, 629 [1st Dept 2025] [recognizing the same]; Liu v Chang, 227 AD3d 410, 411 [1st Dept 2024] [recognizing the same]).

Even so, "this preference will not justify vacating a default judgment where the moving party fails to satisfy the two-prong burden of showing a meritorious defense and a reasonable excuse for the default" (Eisenstein, supra, 135 AD2d at 370). As to a reasonable excuse, neither "neglect" nor "incompetence" satisfies the requisite standard (Liu, 227 AD3d at 410-411).

Conversely, law office failure may be acceptable as a reasonable excuse where the moving party supports the assertion

"with a detailed and credible explanation of the default" (Agostinacchio v Jofaz Transportation, Inc., 238 AD3d 691, 693 [2d Dept 2025] [internal citations and quotations omitted] [emphasis added]). Law office failure should not be excused as reasonable if the moving party proffers a "vague, conclusory, and unsubstantiated" statement or account for the forfeiture (id. [internal citations and quotations omitted]).

Here, plaintiff submits the affirmation of counsel of record and the affirmation of a per diem attorney to support its excuse for failing to appear and to contact the Court with an excuse or request for an adjournment. The affirmation of counsel of record, explains that -- one day prior to the court appearance -- said counsel arranged for a per diem attorney to appear in their stead (see NYSCEF Doc. No. 78, affirmation of counsel of record, dated March 05, 2025). In turn, the per diem attorney's affirmation provides that they failed to appear or to contact the court because of an unexpected subway delay (see NYSCEF Doc. No. 80, affirmation of per diem attorney, dated February 17, 2025).

A delayed subway affecting counsel's punctuality is more attuned to a New Yorker's ordinary commuting challenges than it is to law office failure. Therefore, this Court exercises its discretion to excuse the circumstances here. Indeed, on the date of the subject conference, the per diem attorney eventually

appeared in court, albeit after defendant left and the morning calendar concluded.

Yet, the Court encourages counsel of record to exercise heightened care in complying with section 202.1 (f) of the Uniform Rules for Trial Courts, which is set forth immediately below.

"Counsel who appear before the court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130.2.1"

(Uniform Rules for Trial Courts [22 NYCRR] § 202.1 [f] [emphasis added]; see also 22 NYCRR § 202.27 [reproduced here at n 2]).

Even if per diem counsel had timely appeared at the call of the calendar, the last-minute substitution of an attorney -- who was not fully empowered to discuss and resolve the matter -- constitutes grounds, standing alone, for the Court to find plaintiff in default. This is more so here where the Court issued a settlement conference directive, explicitly reminding all counsel of the same.<sup>3</sup>

<sup>3</sup> This Court's settlement conference directive provides, in part: "The following rules shall apply to all Settlement Conferences . . . where all parties are represented by counsel, not to cases where any party is self-represented. . . . 1. ATTENDANCE. Principal Counsel with decision making authority must attend the settlement conference. Principal Counsel must have authority to agree to a settlement. . . . FAILURE TO COMPLY WITH

Moving to the second prong of the Court's analysis, plaintiff demonstrates a potentially meritorious claim against defendant for breach of contract or, in the alternative, unjust enrichment. In support of this cause of action, plaintiff submits (1) an affidavit of plaintiff's CEO, founder, and custodian of records, which attests that plaintiff provided consulting services to defendant; (2) twelve of plaintiff's invoices to defendant; and (3) plaintiff's record of defendant's alleged payment history, reflecting partial payments and an alleged outstanding balance of \$60,000.00 (see NYSCEF Doc. No. 81, affirmation of facts, dated March 06, 2025; see also NYSCEF Doc. No. 83, payment history, and Doc. No. 84, invoices).

Defendant points out that the contract attached to plaintiff's complaint is unsigned (see NYSCEF Doc. No. 89, affirmation in opposition; see also NYSCEF Doc. No. 02, unsigned and undated consulting services agreement). However, contrary to defendant's contention, the alleged contract being unsigned does not require a finding that plaintiff's claim has no merit (see generally Cornwall Warehousing, Inc. v Lerner, 171 AD3d 540, 541 [1st Dept 2019] ["plaintiffs [] demonstrated a

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THIS DIRECTIVE MAY RESULT IN A DEFAULT ON THE BASIS OF AN INABILITY TO ANNOUNCE READINESS TO PROCEED IMMEDIATELY AT A SCHEDULED CONFERENCE WITH THE COURT (see 22 NYCRR § 202.27)" (Settlement Conference Directive, Part 42 of the New York State Supreme Court, Civil Branch, New York County [emphasis in original]).

potentially meritorious cause of action by providing the affidavit of their president setting forth the basis of their legal malpractice claim"]; Feliciano v Los Chavales #2 Mini Mkt. Corp., 209 AD3d 463, 464 [1st Dept 2022] [finding that plaintiff demonstrated that he has a potentially meritorious cause of action where he submitted an affidavit of merit regarding allegations contained in complaint]).

Accordingly, it is hereby

ORDERED that plaintiff MARATHON STRATEGIES, LLC's motion (seq. no. 05) is granted; it is further

ORDERED that this Court's order of dismissal, dated February 05, 2025, is vacated, and the matter is restored to the calendar; it is further

ORDERED that plaintiff shall serve defendant with this order and notice of entry within ten days of such entry, and shall file with the Court proof of the same; it is further

ORDERED that the parties shall appear before this Court for a settlement conference in Part 42M, Courtroom 574, on January 21, 2026, at 2:30 P.M.; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/13/2025  
DATE

Emily Morales-Minerva  
EMILY MORALES-MINERVA, 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