

**85 First Ave. LLC v A&T Fish & Chips LLC**

2025 NY Slip Op 34794(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 653894/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M**

*Justice*

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85 FIRST AVE. LLC,

Plaintiff,

- v -

A&T FISH AND CHIPS LLC d/b/a THE CHIPPERY, M&M  
FISH LTD, TAMER SHAALAN, AHMED ALY, and MARVIN  
PENNANT,

Defendants.

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INDEX NO. 653894/2024

MOTION DATE 03/24/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 8, 9, 10, 11, 12, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

In this commercial landlord-tenant action, plaintiff-landlord, 85 First Ave. LLC moves, pursuant to CPLR § 3215, for a default judgment against defendant-tenant, A&T Fish and Chips LLC (A&T) d/b/a the Chipperry, and defendants-guarantors, Tamer Shaalan (Shaalán) and Ahmed Aly (Aly) to recover \$115,734.49 (plus interest) in damages for breach of contract.<sup>1</sup> Plaintiff also moves for an award of attorneys' fees and expenses of at least \$25,000, or alternatively, a hearing to determine the amount it may recover. Defendants oppose the motion and cross-move, pursuant to CPLR § 3211 (a) (7), to dismiss the action based on Administrative Code of the City of NY § 22-1005 (the Guaranty Law). In the alternative, defendants seek leave to interpose a late answer pursuant to CPLR § 3012 (d).

For the reasons set forth below, plaintiff's motion is denied, defendants' cross-motion is granted only to the extent of permitting a late answer, and defendants' joint proposed answer

<sup>1</sup> Shortly after commencing the action, plaintiff filed a notice of discontinuance as to defendants M&M Fish LTD and Marvin Pennant (NYSCEF Doc No. 12).

(NYSCEF Doc No. 37) is deemed timely filed and served nunc pro tunc.

### Brief background

Plaintiff commenced this action by filing a summons and complaint on August 1, 2024 (NYSCEF Doc No. 26). On September 5, 2024, Shaalan and Aly each filed a pro se notice of appearance and demand for a verified complaint, together with a joint acknowledgement of service (NYSCEF Doc Nos. 8-11). The acknowledgement of service states as follows:

“We have received the service documents and respectfully request additional time to review the allegations and look forward to receiving evidence from the plaintiff to determine our next steps in this case. We also seek extra time to examine the claims in detail.

In the interim, we request that the plaintiff submit verification and ledgers supporting the claims for our review. Additionally, we have attempted to contact the attorney of record without success. Therefore, we request an explanation regarding the amount owed since 2019 and details supporting these claims.

We respectfully ask for more time to complete our review before we request a proceeding with judicial intervention or further litigation, while we await the requested details from the plaintiff” (*id.*).

About seven months after these pro se filings, plaintiff filed its motion for a default judgment.

Thereafter, defendants filed their cross-motion.

### Discussion

The court may deny a motion for a default judgment when a defendant presents a reasonable excuse for their delay in filing an answer (*see Smoke v Windermere Owners, LLC*, 109 AD3d 742, 742 [1st Dept 2013]; *Peg Bandwidth, LLC v Optical Communications*, 150 AD3d 625, 626 [1st Dept 2017]). Likewise, when a defendant seeks leave to file a late answer, the court has discretion to extend defendants “time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and a showing of reasonable excuse for delay or default” (CPLR § 3012 [d]). The court “has broad discretion in gauging the sufficiency of an

excuse proffered by a defendant who failed to serve timely an answer” (*Cirillo v Macy's, Inc.*, 61 AD3d 538, 540 [1st Dept 2009]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]). In making its determination, the court considers “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, 413-414 [1st Dept 2011]; see *Epstein Becker & Green, P.C. v Samson Mgt. LLC*, 188 AD3d 454, 455 [1st Dept 2020]). Apart from these factors, the court has “the inherent power to forgive even an unexplained default in the interest of justice” (*New Media Holding Co. LLC v Kagalovsky*, 97 AD3d 463, 465 [1st Dept 2012] [internal quotation marks and citation omitted]). Also, when no default judgment has been entered, the court is not required to consider whether a defendant has a meritorious defense (see *Epstein Becker & Green, P.C.*, 188 AD3d at 455).

Defendants Shaalan and Aly provide the same excuse for why they did not timely answer the complaint (see NYSCEF Doc Nos. 35 and 36, affidavits of Shaalan and Aly at ¶¶ 2-3). Specifically, Shaalan and Aly state as follows:

“2. At the outset of this litigation, [we] appeared *pro se* and attempted in good faith to respond to the Complaint by uploading documents via the NYSCEF system. [We] believed, in good faith, that [our] submissions constituted an adequate response to the lawsuit and was sufficient to comply with procedural requirements.

3. [We] did not understand that [our] filings were procedurally deficient or that a formal Verified Answer was required to avoid default. [Our] intention was never to ignore this action or to disrespect the legal process or this Honorable Court. [We] always intended to appear and respond to the allegations raised by Plaintiff on the merits”

Shaalan and Aly further state that when they learned of plaintiff’s motion, they “retained counsel...to cure any defects, protect [their] rights, and file a proper response” (*id.* at ¶ 4).

Critical in the court's analysis is that the action's summons warned defendants that "in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the accompanying complaint, together with the costs of this action" (NYSCEF Doc No. 26 [emphasis added]). The use of the word "or" in the summons makes it reasonable for Shaalan and Aly to have believed that their notices of appearance were sufficient to avoid a default judgment.<sup>2</sup> As such, their delay in filing an answer was not willful. There is also no prejudice from the delay as plaintiff waited several months before seeking a default judgment. As for A&T, the court observes that there is no excuse proffered on its behalf for the delay. The lease, however, indicates that Shaalan and Aly are the members of A&T and that Shaalan is A&T's president (NYSCEF Doc No. 22 at 30-31).<sup>3</sup> Considering the same and in the interests of justice, the court excuses A&T's default. Thus, under the circumstances presented here and the strong public policy in favor of resolving cases on the merits, the court accepts defendants' answer.

One final issue merits discussion. Defendants argue that the Guaranty Law serves as a basis for dismissal of the action. The Guaranty law "provides that lease guarantors of businesses that were required to cease operation or close[] to members of the public under [Governor Cuomo's COVID-related] executive orders...will not be held liable for unpaid rents of those businesses owed between [the statutory period of] March 7, 2020 and June 30, 2021" (*274 Madison Co., LLC v Vieira*, 205 AD3d 403, 404 [1st Dept 2022] [internal quotation marks and citations omitted]). Also, the Guaranty Law bars recovery from a guarantor for utility costs, taxes, and "fees and

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<sup>2</sup> Further, Shaalan's and Aly's acknowledgement of service constitutes an inartful request for more time and for proof related to plaintiff's claims.

<sup>3</sup> To be precise, Section 65.02 of the lease reads in pertinent part: "To induce Landlord to enter into this Lease, Tanner [sic] Shaalan and Ahmed Al [sic], as principals of Tenant [A&T], shall deliver their personal guaranty of this Lease in the form of the guaranty annexed hereto [and] Tenant represents that Tanner [sic] Shaalan and Ahmed Aly are the members of Tenant" (*id.* at 30). The lease's signature page indicates that Shaalan signed the lease on behalf of A&T as its president (*id.* at 31).

charges relating to routine building maintenance” that accrued during the proscribed statutory period (Administrative Code § 22-1005). Here, A&T operated a restaurant, a business required to close to members of the public pursuant to COVID-related executive orders during the relevant time period, and thus, Shaalan and Aly, as guarantors, are not liable for any unpaid rent, utility costs, and building maintenance fees or charges that accrued during the proscribed statutory period. It remains to be seen whether Shaalan and Aly, as guarantors, are liable for any unpaid rent, utility costs, and building maintenance fees or charges that accrued outside that period.<sup>4</sup>

Accordingly, it is

ORDERED that plaintiff’s motion for a default judgment is denied; and it is further

ORDERED that defendants’ cross-motion is granted only to the extent that defendants answer is deemed timely filed and served nunc pro tunc. However, the cause of action against Defendants otherwise remains and it is further

ORDERED that within 30 days of entry, counsel for plaintiff shall serve upon all defendants to this action a copy of this decision and order together with notice of entry.

This constitutes the decision and order of the court.

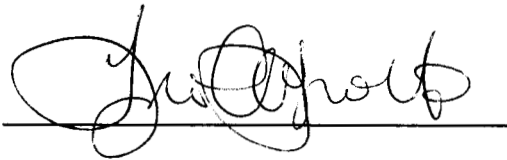
12/10/2025  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE



<sup>4</sup> Since plaintiff argues in opposition to the cross-motion that the Guaranty Law is unconstitutional, citing to *Melendez v City of New York* (668 F Supp 3d 184 [SD NY 2023]) and other New York Supreme Court decisions, it must be said that those decisions are not binding on the court. Indeed, post-*Melendez*, the First Department has not declared the Guaranty Law unconstitutional (see e.g. *3rd & 60th Assoc. Sub LLC v Zavolunov*, 223 AD3d 488, 490-491 [1st Dept 2024]; *Tamar Equities Corp. v Signature Barbershop 33 Inc.*, 223 AD3d 421, 424 [1st Dept 2024]). Therefore, the “[c]ourt is bound on this issue by the First Department, who continues to enforce the Guaranty Law post-*Melendez*” (*7955 AE Co. Inc. v Nasax Inc.*, 2025 NY Slip Op 31465[U] \*6 [Sup Ct, NY County 2025]; see also *Europa Realty LLC v Inserra*, 2025 WL 295703, \*1, 2025 NY Misc Lexis 4532, \*2-3 [Sup Ct, NY County 2025]).