

Dong v Kabaya LLC

2026 NY Slip Op 31287(U)

March 27, 2026

Supreme Court, New York County

Docket Number: Index No. 159556/2024

Judge: Matthew V. Grieco

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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. MATTHEW V. GRIECO PART 30M

Justice

-----X INDEX NO. 159556/2024

KALYNN DONG MOTION DATE 02/05/2026

Plaintiff, MOTION SEQ. NO. 002

- v -

KABAYA LLC D/B/A KEBAYA, DECISION + ORDER ON MOTION AND CROSS-MOTION Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motion for a default judgment is denied, and defendant's cross-motion to deny plaintiff's default motion and compel acceptance of the answer pursuant to CPLR 3012(d) is granted.

On October 15, 2024, plaintiff, Kaylynn Dong, commenced this action against defendant Nevaeh 17 LLC d/b/a Kebaya i/s/h/a Kebaya LLC d/b/a Kebaya¹ to recover damages for injuries sustained at defendant's restaurant (see Summons and Verified Complaint, NYSCEF Doc. No. 1). Plaintiff served the summons and complaint on October 17, 2024 (see Affidavit of Service, NYSCEF Doc. No. 2).²

¹ Plaintiff named defendant as "Kebaya LLC d/b/a Kebaya."

² Plaintiff named defendant as "Navaeh 17 LLC d/b/a Kebaya LLC."

On May 8, 2025, plaintiff moved for a default judgment pursuant to CPLR 3215 against defendant (NYSCEF Doc. Nos. 4-12).

On June 25, 2025, the Court (Ramirez, J.) denied plaintiff's motion because plaintiff had failed to make additional service of the summons by first class mail to defendant's last known address pursuant to CPLR 3215(g)(4) (NYSCEF Doc. No. 14).

On December 12, 2025, plaintiff again moved for a default judgment pursuant to CPLR 3215 against defendant (NYSCEF Doc. Nos. 16-24).

Also on December 12, 2025, defendant filed an answer to the verified complaint (NYSCEF Doc. No. 25).

On December 23, 2025, defendant requested an administrative adjournment to file an opposition to the motion for default judgment (NYSCEF Doc. No. 28).

On January 16, 2026, defendant filed an opposition to the motion for default judgment (NYSCEF Doc. Nos. 29-31), as well as a cross-motion pursuant to CPLR 3012(d) and 2004, to extend the time to answer the complaint and compel acceptance of the answer (NYSCEF Doc. Nos. 32-35).

Plaintiff did not file an opposition to the cross-motion.

As to the cross-motion, pursuant to CPLR 3012(d): "Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default." In addition to considering reasonable excuse for delay or default, other factors include whether: the delay in answering was relatively short; plaintiff suffered prejudice; there is evidence of willfulness; and (although perhaps not essential where a default judgment has not yet been entered) there is a meritorious defense (*see Pichardo v 969 Amsterdam Holdings, LLC*, 176 AD3d 571, 572

[1st Dept 2019]). This State has a strong public policy favoring resolving controversies on the merits (*id.*), and 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]).

Here, defendant states that it was sued under the incorrect name, i.e. “Kebaya LLC d/b/a Kebaya,” rather than the correct name, “Nevaeh 17 LLC d/b/a Kebaya i/s/h as Kebaya LLC d/b/a Kebaya.” Defendant asserts that it never intended to default in this action and acted in good faith to appear and defend against plaintiff’s claims. Defendant also avers that it made several unsuccessful attempts to contact plaintiff. Specifically, on December 10, 2025, after recording representation in NYSCEF, defense counsel emailed plaintiff’s counsel noting their representation and requesting an extension to answer the complaint. No response was received. On December 12, 2025, plaintiff filed the default motion. On December 18 and 19, 2025, defense counsel contacted plaintiff’s counsel via telephone and email, requesting adjournment or withdrawal of the motion for default; however, after an initial response that plaintiff’s counsel would speak to his client, counsel was again unresponsive (NYSCEF Doc. Nos. 29-35).

Although an error with defendant’s name, in and of itself, might be insufficient to excuse a delayed answer (*see Yang v Knights Genesis Group.*, 223 AD3d 639, 640 [1st Dept 2024]), and despite the length of defendant’s delay, there is no evidence here that defendant’s delay was willful. Defendant made repeated attempts to contact plaintiff and also requested an extension from the Court before answering (*compare Zelefsky v Rockefeller Ctr. Parking*, 197 AD2d 452, 453 [1st Dept 1993] [defendant failed to offer excuse for default after court granted all defendants additional time to answer]; *Salvagne v Transamerica Ins. Co.*, 93 AD2d 761 [1st Dept 1983] [defendant showed

“continuous pattern of default and neglect”]). Moreover, there is no showing of prejudice to plaintiff, and defendant has put forth a meritorious defense in its answer. For these reasons, and given this State’s strong public policy favoring resolving controversies on the merits (*Pichardo*, 176 AD3d at 572), the Court compels acceptance of defendant’s answer.

In light of that determination, plaintiff’s motion for a default judgment is denied.


It is therefore

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

ORDERED that defendant’s cross-motion to deny plaintiff’s default motion and compel acceptance of the amended answer pursuant to CPLR 3012(d) is granted; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 623, 111 Centre Street, New York, New York, on April 28, 2026, at 10:00 AM.

This constitutes the decision and order of the Court.

3/27/2026		
DATE		MATTHEW V. GRIECO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE