

<b>Keefe v BMakin Film LTD</b>
2026 NY Slip Op 31794(U)
April 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 525621/2025
Judge: Gina Abadi
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At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 20<sup>th</sup> day of April 2026.

PRESENT:

HON. GINA ABADI,  
J.S.C.

Julia Keefe,

Plaintiff,

Index No.: 525621/2025

Motion Seq: 2

-against-

DECISION/ORDER

BMakin Film LTD, Ben Makinen

Defendants.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed.....	22-33, 47-50
Opposing Affidavits (Affirmations).....	37, 52-54
Reply Affidavits (Affirmations).....	38
Other.....	

Upon the foregoing cited papers and after oral argument, the Decision/Order on this motion is as follows:

Defendant Ben Makinen (hereinafter “Makinen”) moves (MS #2), pursuant to CPLR § 5015(a)(1) and 22 NYCRR 202.27 to vacate the default entered by order dated January 5, 2025, and upon vacatur, restoring his underlying motion to dismiss (MS #1), and granting him leave to appear remotely.

Plaintiff commenced this action by the filing a Summons and Complaint on July 30, 2025. Plaintiff, who is of Native American heritage, alleged that Makinen and his production company, defendant BMakin Film LTD (hereinafter “BMakin Film), deliberately and wrongfully

appropriated her image, likeness, and name in connection with the release of his documentary film. Makinen and BMakin Film were allegedly served on August 21 and August 26, 2025, respectively. On September 26, 2025, Makinen uploaded a “Notice of Appearance and Demand for Service of Papers (Pro Se)” in which he indicated that that he “shall” accept all electronic filings via NYSCEF, requesting his address of record be modified and demanding that all copies of papers filed in this action also be served upon him in Bali, Indonesia. On that same date, plaintiff served the Summons and Complaint via NYSCEF and uploaded an affirmation of service reflecting such.

On October 1, 2025, Makinen uploaded a letter addressed to Honorable Nancy Sunshine, Kings County Clerk, requesting an extension of time to answer on behalf of BMakin Film. Makinen subsequently filed a Request for Judicial Intervention and moved to dismiss this action against himself only, seeking dismissal pursuant to CPLR §§ 3211(a)(1), (7), and (11) on the ground that the defamation claim failed to satisfy the heightened pleading requirements imposed by New York’s Anti-SLAPP statute. Alternatively, he requested dismissal based upon CPLR § 327(a) on the grounds of forum non conveniens. Pursuant to this Court’s Part Rules and a separate Notice which was uploaded via NYSCEF to this action, the Court requires in person oral argument on all motions and scheduled such for January 5, 2026. Following the filing of his motion, Makinen submitted a “Table of Authorities” listing ten cases purportedly supporting his arguments, however, he did not request permission to appear remotely. Opposition was filed and the motion was denied on January 5, 2026, pursuant to 22 NYCRR 202.27, due to defendant movant’s failure to appear for oral argument. On January 10, 2026, Makinen made the instant motion to vacate his default in appearance, to restore MS #1, and to appear remotely.

Oral argument on the present motion was conducted remotely on February 26, 2026. In preparation, the Court reviewed Makinen’s submission, including a “Memorandum of Law,”

which seemed to be AI generated and contained several inaccurate statements. Movant asserts that “courts consistently recognize that a pro se litigant’s misunderstanding of local motion practice—particularly when compounded by geographic distance—constitutes a reasonable and excusable default,” citing *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., Inc.*, 67 NY2d 138, 142 (1986). However, that case involves only corporate entities and contains no individual parties, rather, it discusses whether a trial court abused its discretion in granting a motion to vacate a judgment.<sup>1</sup>

In review of the underlying motion (MS #1), the Court notes the movant’s papers are riddled with AI generated arguments and incorrect citations.<sup>2</sup> Makinen cites “*Clark v. Velsiplast Corp.*, 88 A.D.2d 859 (1st Dep’t 1982)” and quotes from said case, alleging that it stands for the proposition that his release is binding. However, the citation is incorrect, it is for *People v Ford*, 88 AD2d 859 (1st Dept 1982) and does not stand for the proposition alleged. Moreover, the quote does not appear anywhere in said case, as represented to the Court. Makinen also cites “*Shah v. Levy*, 56 A.D.3d 574 (2d Dep’t 2008),” but again, said citation is for a different action that has nothing to do with the proposition Makinen alleges. Makinen cites *Klapper v Graziano*, 41 Misc 3d 401, 410 (Sup Ct 2013), and allegedly quotes from said case by stating that releases “are enforceable and are not to be lightly set aside.” However, said quote appears nowhere in the case. Makinen cites many phantom cases along with phantom quotes, which are too lengthy to repeat.

On February 26, 2026, all parties appeared remotely for oral argument on MS #2. Makinen appeared and the Court questioned him with respect to his AI generated papers. He stated that he did nothing wrong since he was just trying to “participate in the legal process” and by generating

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<sup>1</sup> The Court notes that the word “per se” appears in the decision several times, but never the word pro se.

<sup>2</sup> Movant attempted to withdraw MS#1 after a decision was rendered and after oral argument was heard on MS#2 and this Court finds that Makinen was aware of his various misrepresentations.

such papers he was just “putting his best foot forward.” Moreover, he states that the quotes contained in his moving papers should be treated as if he copied them directly from a legal book. In opposition, plaintiff claimed a pattern of harassment fueled by AI generated documents. Plaintiff claims that the AI generated “gobbly gook” has been a pattern and that defendant has been acting in bad faith.

Pursuant to 22 NYCRR § 130-1.1 (a), “the court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part.” Under 22 NYCRR § 130-1.2, “the court may award costs or impose sanctions or both only upon a written decision setting forth the conduct on which the award or imposition is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount awarded or imposed to be appropriate. An award of costs or the imposition of sanctions or both shall be entered as a judgment of the court. In no event shall the amount of sanctions imposed exceed \$10,000 for any single occurrence of frivolous conduct.”

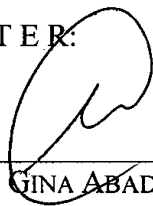
Submissions that rely on non-existent cases generated by artificial intelligence, resulting in AI “hallucinations” and cases that do not stand for the propositions alleged, are considered “frivolous conduct” under 22 NYCRR § 130-1.1 and are sanctionable. *See Will of Samuel*, 82 Misc 3d 616, 621 (Sur Ct 2024). A party’s pro se status does not excuse such conduct.

It is clear and undisputed that Makinen used Artificial Intelligence to create the documents relied upon in his motions. Moreover, it is undisputed that these papers contained AI hallucinations and made material misrepresentations to the Court. The Court finds his argument that he is pro se and simply putting his best foot forward to be disingenuous. At oral argument, the Court noted that there are hundreds of pro se litigants that appear in this Court without relying on AI generated documents and memorandums. The Court pointed out that Makinen had the option to simply state his arguments in an affidavit instead of submitting memorandums of law with fictitious quotes and citations. This conduct not only wasted this Court’s time and resources but also caused plaintiff and her attorney to incur unnecessary time and expense.

Having found Makinen’s conduct to be frivolous, the Court concludes that while sanctions are appropriate, the Court will first hereby issue a warning to Makinen against the use of AI generated papers that contain fictitious quotes and citations. If Makinen submits further AI generated documents in violation of this Court’s warning, plaintiff will be awarded monetary sanctions. Finally, defendant’s motion to vacate is denied as the Court will not consider Makinen’s motion papers based on fictitious authority.

The foregoing constitutes the decision and order of this Court.

ENTER:

  
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 HON. GINA ABADI  
 J.S.C.

**Hon. Gina Abadi**  
**J.S.C.**  
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