

Friends of Petrosino Sq. v Soho Hummus LLC
2026 NY Slip Op 31861(U)
April 30, 2026
Supreme Court, New York County
Docket Number: Index No. 155973/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57M

Justice

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FRIENDS OF PETROSINO SQUARE, GEORGETTE
FLEISCHER, CHRISTINE SPERRY, MARNA LAWRENCE,
PAUL HALLASY

Plaintiffs,

- v -

SOHO HUMMUS LLC, EYAL HEN, FONTANA REALTY
LLC, JOHN ILIBASSI, DAVID CHEN,

Defendants.

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INDEX NO. 155973/2021

MOTION DATE 04/02/2026

MOTION SEQ. NO. 010

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 343, 344, 374, 385, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394

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

BACKGROUND

Plaintiffs commenced this action seeking a declaratory judgment, and injunction and damages for breach of the warranty of habitability against the Defendants.

On December 24, 2025, Motion Seq No 8 seeking summary judgment was filed. On December 26, 2025, Motion Seq No 9 also seeking summary judgment was filed. On January 20, 2026, the parties entered a stipulation extending Plaintiff's time to file opposition papers to February 23, 2026 (NYSCEF Doc Nos. 343, 344). The parties did not obtain the required court approval for this stipulation which adjourned the motion over 60 days to March 25, 2026.

On March 30, 2026, motion sequences 008 and 009 were marked submitted, and Plaintiffs had not filed opposition.

On April 2, 2026, Plaintiffs nevertheless filed opposition to both motions. The late filed papers were promptly rejected by Defendants (NYSCEF Doc # 374 & 375).

On April 28, 2026, the Court issued a decision and order granting the motion for summary judgment of defendants Soho Hummus LLC and Eyal Hen, partially granting the motion for summary judgment of defendants Fontana Realty LLC, John Ilibassi, and David Chen, and vacating the injunction as to all defendants (NYSCEF Doc Nos. 393, 394).

PENDING MOTION

Plaintiffs now move for vacatur of their default in opposing motion sequences nos. 008 and 009 and deeming the annexed opposition papers as timely served and filed (NYSCEF Doc No. 376 [mot. seq. 010]).

DISCUSSION

To successfully vacate a default, a party must demonstrate a justifiable excuse for his default and a meritorious claim. [*Mejia v. Ramos*, 113 A.D.3d 429, 430 (1st Dept 2014)].

The Court finds that no excusable default has been asserted by Plaintiffs. Plaintiff Georgette Fleischer's bicycle accident occurred three weeks before the Restaurant Defendants filed their initial moving papers; (ii) Plaintiffs' Counsel's hospitalization occurred almost three weeks after Plaintiffs' opposition was due; and (iii) none of the other Plaintiffs submitted affidavits in the late opposition papers filed, belying the need for an adjournment to obtain them. As a result, Plaintiffs have failed to show good cause as to why they could not oppose Restaurant Defendants' motion in the two months between its filing and the stipulated deadline to submit opposition.

This pattern of delay has permeated Plaintiff's conduct throughout this action. The parties initially sought to delay the time period for dispositive motions by seeking an extension of the September 2025 deadline for a note of issue. This request was denied by the Court on

September 26, 2025. On December 2, 2025, the parties again sought to avoid proceeding in this action and requested a 60 day stay. This request was denied by the Court on December 3, 2025.

On March 24, 2026, Plaintiff again sought a further adjournment of time to submit opposition, which was again immediately denied in writing.

Notwithstanding the Court's clear and unequivocal position from the fall of 2025 through the Spring of 2026, Plaintiff failed to submit opposition to the motion. If counsel had put as much time and energy into preparing opposition papers as they did in seeking adjournments surely they would have between two attorneys and one paralegal been able to submit opposition in the many months within which they were permitted to do so.

Absent a reasonable excuse, vacatur is not appropriate regardless of whether a meritorious claim has been asserted. *U.S. Bank Tr. N.A. as Tr. for LSF9 Master Participation Tr. v. Rivera*, 187 A.D.3d 624, 625 (1st Dept 2020).

Nor do the moving papers attempt to establish in any meaningful way that Plaintiff had a meritorious opposition to the motions. The Court having reviewed the opposition does not find that it would have warranted a different outcome. To the extent Plaintiff argues Defendants failed to meet their initial burden, the Court's decisions on the motion found otherwise to a large extent.

CONCLUSION

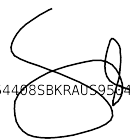
Accordingly, it is hereby:

ORDERED that the Plaintiffs' motion (mot. seq. 010) is denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, Defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



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4/30/2026
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE