

<b>Maximum Quality Foods Inc. v 197 Bistro Inc.</b>
2026 NY Slip Op 31973(U)
May 8, 2026
Supreme Court, New York County
Docket Number: Index No. 156186/2025
Judge: Emily Morales-Minerva
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defendants' untimely answer. Plaintiff does not oppose the cross-motion.

CPLR § 3012 (d) provides that a court has the discretionary power to extend the time to plead, or to compel acceptance of an untimely pleading "upon such terms as may be just", provided that there is a showing of a reasonable excuse for the delay (see U.S. Bank N.A. v Barker Project LLC, 220 AD3d 588, 588-589 [1st Dept 2023]).

Whether a reasonable excuse exists is a "discretionary, sui generis determination to be made by the court based on all relevant factors" including, among other things, whether there has been prejudice to the opposing party, whether there has been willfulness, and the policy in favor of resolving cases on the merits" (New Media Holding Co. LLC v Kagalovsky, 97 AD3d 463, 465 [1st Dept 2012]; see also Chevalier v 368 E. 148th St. Assoc., LLC, 80 AD3d 411, 413-414 [1st Dept 2011]). Further, a defendant is "not required to set forth a meritorious defense [if] no default [has] been entered" (Hirsch v New York City Dept. of Educ., 105 AD3d 522 [1st Dept 2013]; see also Sukhu v R.A.I.N. Home Attendant Services, Inc., 190 AD3d 468 [1st Dept 2021] [holding that "defendants need not proffer a meritorious defense" since no default order or judgment has been obtained by plaintiff], citing Nason v Fisher, 309 AD2d 526 [1st Dept 2003]).

In consideration of the relevant factors, particularly the brevity of the delay in pleading, and the lack of willfulness or prejudice to plaintiff, plaintiff's claims against defendant should be decided on their merits, not on default (see Genao v Salcedo Maintenance Corp., 168 AD3d 528, 528-29 [1st Dept 2019]; see also Yea Soon Chung v Mid Queens LP, 139 AD3d 490 [1st Dept 2016]). Therefore, the Court grants defendants' cross-motion, and denies plaintiff's motion (seq. no. 01) for an order granting it a default judgment against defendants.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01) for a default judgment is denied; it is further

ORDERED that defendants' cross-motion is granted, and the answer filed by defendants at NYSCEF Doc. No. 19 is deemed its operative pleading in this action; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, on defendants; it is further

ORDERED that the parties shall appear for a preliminary conference in Part 42M, Courtroom 574, 111 Centre Street on August 12, 2026, at 12:30 P.M.; and it is further

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

5/8/2026

DATE

  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: