

McKenzie v Charlme
2026 NY Slip Op 31985(U)
April 29, 2026
Supreme Court, Kings County
Docket Number: Index No. 534953/2024
Judge: Richard J. Montelione
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS: PART 99

DECISION/ORDER

-----X
 KAYON MCKENZIE,

Action No. 1

Plaintiff,
 -against-

Index No.: 534953/2024
 Motion Date: 4-22-26
 Motion Cal. No.: 41-42
 Mot. Seq. 1-2

MAXCENE CHARLME and AREA STORAGE &
 TRANSFER INC.,

Defendants.

-----X

-----X
 KAREN BLAKE,

Action No. 2

Plaintiff,
 -against-

Index No.: 513699/2025
 Motion Date: 4-22-26
 Motion Cal. No.: 8-9
 Mot. Seq. 2-3

MAXCENE CHARLME and AREA STORAGE &
 TRANSFER INC.,

Defendant.

-----X

The following papers numbered 1 to 1 were read on this motion pursuant to CPLR 2219(a):

Papers	Numbered
Action No. 1 (Index No. 534953/2024)	
Summons and Complaint.....	1
Answer with Counterclaim(s).....	4
Notice of Removal/Stipulation to Remand.....	8-9
Amended Answer with Counterclaim(s).....	10
Defendants' Notice of Motion/Affidavits/Affirmations/Exhibits.....	18-29
Reply to Counterclaim.....	30
Plaintiff's Notice of Cross-motion/Affirmations/Exhibits.....	33-38
Affirmation in Opposition to Cross-motion/Affidavits/Exhibits.....	39-42
Reply Affirmations/Affidavits/Exhibits.....	43
Action No. 2 (Index No. 513699/2025)	
Summons and Complaint.....	1
Answer with Counterclaim(s).....	2
Defendants' Notice of Motion/Affidavits/Exhibits.....	17-28
Reply to Counterclaim(s).....	29
Plaintiff's Notice of Cross-Motion/Affidavits/Exhibits.....	31-36
Affirmation in Opposition to Cross-motion/Affidavits/Exhibits.....	37-40
Reply Affirmations/Affidavits/Exhibits.....	41

Kayon Mckenzie (McKenzie) commenced Action No. 1 (Index No. 534953/2024) by filing the summons and complaint on December 23, 2024, alleging personal injuries as a result of a motor vehicle accident that occurred on April 24, 2024. On February 27, 2025, Maxcene Charlme and Area Storage & Transfer, Inc. (defendants) filed a verified answer with counterclaims.

On February 28, 2025, defendants filed a Notice of Removal to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1446. On March 5, 2025, McKenzie and defendants stipulated to withdraw the Notice of Removal and remand Action No. 1 back to Supreme Court, Kings County. Thereafter, defendant served an amended answer with affirmative defenses and counterclaims on March 7, 2025. McKenzie served a reply to the counterclaims on January 22, 2026.

On April 24, 2025, Karen Blake (Blake) commenced Action No. 2 (Index No. 513699/2025) by filing a summons and complaint, alleging personal injuries arising out of the same motor vehicle accident on April 24, 2024. Defendants joined issue by filing verified answer with counterclaims on May 12, 2025. Also on May 12, 2025, defendants moved to consolidate Action No. 2 with Action No. 1 for the purposes of joint trial and discovery. By order dated September 3, 2025, defendants' motion was granted and the matters were joined for trial and discovery.

Now, defendants move in Action No. 1 (Index No. 534953/2024) for an order granting summary judgment dismissing McKenzie's complaint pursuant to CPLR 3212 and granting defendants a default judgment against McKenzie on defendants' counterclaims pursuant to CPLR 3215(1) for failure to answer defendants' counterclaims (MS#1). McKenzie cross moves for an order compelling defendants to accept his reply, or in the alternative, deeming the reply timely served nunc pro tunc (MS#2).

Under Action No. 2 (Index No. 513699/2025), defendants move for the identical relief (MS#2) and Blake also cross-moves for an order compelling defendants to accept her reply, or in the alternative, deeming the reply timely served nunc pro tunc (MS#3).

The parties appeared for oral argument on April 22, 2026. The motions are consolidated for disposition.

Legal Analysis

Pursuant to CPLR 3025 a party may amend a pleading once without leave of court within twenty (20) days of service of the pleading, or at any time before the period for responding to it expires, or within 20 days of service of a responsive pleading. CPLR 3025 (a).

Here, defendants served an answer with counterclaims on February 27, 2025, in Action No. 1 (Index No. 534953/2024). The last day to amend the answer without leave of court would have been March 19, 2025. Defendants timely filed an amended answer with affirmative defenses and counterclaims on March 7, 2025. Pursuant to CPLR 3012(a), "Service of an answer or reply shall be made within twenty days after service of the pleading to which it

responds.” Therefore, McKenzie’s last day to serve a reply to defendants’ amended answer with affirmative defenses and counterclaim would have been March 27, 2025. The instant motion for default judgment against McKenzie was timely filed on January 21, 2026. McKenzie’s reply was not filed until January 22, 2026. In Action No. 2 (Index No. 513699/2025), defendant served an answer with counterclaims on May 12, 2025. Blake’s last day to serve a reply to the counterclaim would have been June 1, 2025. The motion for default judgment against Blake was timely filed on January 22, 2026. Blake’s reply to the counterclaims was also filed on January 22, 2026, well-beyond the twenty days to do so expired. Therefore, both replies are untimely, and defendants are entitled to default judgment on their respective counterclaims for fraud.

Contrary to both McKenzie and Blake’s assertions, the standard for vacating a default is demonstrating a reasonable excuse and meritorious defense to the claim. *See* CPLR 5015. Neither plaintiff provides a reasonable excuse for the near eleventh-month delay in replying to the counterclaim, except to state, in a conclusory fashion, that it was due to inadvertent law office failure. Since no reasonable excuse was demonstrated, it is unnecessary to address whether McKenzie or Blake demonstrated a meritorious defense. *See Cervini v Cisco General Const., Inc.*, 123 AD3d 1077, 1077 [2d Dept 2014].

Defendants further move in both actions for an order granting summary judgment dismissing the respective complaints pursuant to CPLR 3212. After oral argument on the record, and upon the court’s review of the properly authenticated video footage of the accident (Index No. 534953/2024, NYSCEF Doc. No. 24 & 29), the court finds that the defendants have met their prima facie entitlement to summary judgment. The video footage establishes that defendant Maxcene Charlme was driving the tractor trailer owned by defendant Area Storage & Transfer, Inc. in the center lane of travel. It further establishes that the vehicle in which McKenzie was a passenger and Blake was the operator traveling in the right lane of traffic. At approximately 00:23 seconds, the video footage shows Blake’s vehicle impact the right side of the tractor trailer traveling steady in the center lane. In opposition, plaintiffs fail to raise a triable issue of fact.

Based on the foregoing, it is

ORDERED, that MS#1 in Action No. 1 (Index No. 534953/2024) and MS# 2 in Action No. 2 (Index No. 513699/2025) by defendants for an order granting summary judgment dismissing McKenzie’s complaint pursuant to CPLR 3212 and granting defendants a default judgment against McKenzie on defendants’ counterclaims pursuant to CPLR 3215(1) for failure to answer defendants’ counterclaims is **GRANTED**. The complaints are dismissed. Defendants shall have default judgment against each plaintiff on the counterclaim of fraud; and it is further

ORDERED, that an inquest for an assessment of damages on defendants’ counterclaim is scheduled for 6/10, 2026 at 2:30 a.m. (p.m.), in Part 99, Courtroom 574; and it is further

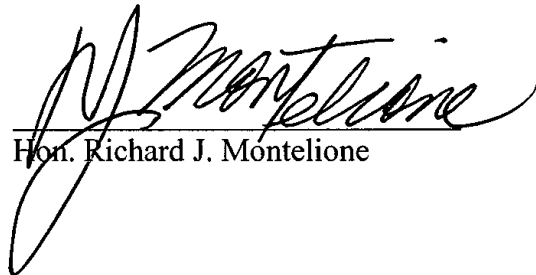
ORDERED, that MS#2 in Action No. 1 (Index No. 534953/2024) by plaintiff KAYON MCKENZIE for an order compelling defendants to accept the reply to the counterclaim and for the court to deem it timely served nunc pro tunc is **DENIED**; and it is further

ORDERED, that MS#3 in Action No. 2 (Index No. 513699/2025) by plaintiff KAREN BLAKE is DENIED for an order compelling defendants to accept the reply to the counterclaim and for the court to deem it timely served nunc pro tunc is DENIED; and it is further

This constitutes the decision and order of the Court.

Dated:

APR 29 2026



Hon. Richard J. Montelione

KINGS COUNTY CLERK
FILED
2026 MAY - 6 A 9:47