

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Dusaj v. Waterbridge Court Square Holdings, LLC

Dusaj, 2025 NY Slip Op 06988 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2023-05386 · Decided December 17, 2025

SUMMARY

The Appellate Division, Second Department reversed an order granting Waterbridge Court Square Holdings, LLC's motion under CPLR 5015(a)(1) to vacate an order granting the plaintiff leave to enter a default judgment. The court held that the defendant failed to establish a reasonable excuse for its default, making it unnecessary to determine whether it had a potentially meritorious defense.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Linda Christopher, J.; Carl J. Landicino, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 17, 2025
DOCKET	2023-05386
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendant's motion under CPLR 5015(a)(1) to vacate an order granting the plaintiff leave to enter a default judgment.
STANDARD OF REVIEW	Abuse of discretion; whether the Supreme Court improvidently exercised its discretion in determining that the defendant had shown a reasonable excuse for its default.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Paska Dusaj v. Waterbridge Court Square Holdings, LLC

TOPICS

- default judgment
- default
- appellate procedure
- civil procedure
- personal injury

PRACTICE AREAS

civil procedure

personal injury

appellate procedure

QUESTIONS PRESENTED

1. Whether Waterbridge demonstrated a reasonable excuse for its default and therefore was entitled under CPLR 5015(a)(1) to vacatur of the order granting leave to enter a default judgment.
2. Whether the court needed to determine whether Waterbridge had a potentially meritorious defense after it failed to establish a reasonable excuse for its default.

HOLDINGS

1. A defendant seeking to vacate a default under CPLR 5015(a)(1) must demonstrate both a reasonable excuse for the default and a potentially meritorious defense. Waterbridge's belief that the lessee was defending the action, together with its unexplained failure to respond for more than three months after notice of the default-judgment order, was not a reasonable excuse.
2. Because Waterbridge failed to establish a reasonable excuse for its default, it was unnecessary to determine whether Waterbridge had a potentially meritorious defense.

KEY QUOTATIONS

“A defendant seeking to vacate a default in answering or appearing pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action” ([*1])

“In determining whether a reasonable excuse has been shown, a court should consider all the relevant factors, including the extent of the delay, prejudice to the opposing party, whether the default was willful, and the strong public policy in favor of resolving cases on the merits” ([*1])

FACTUAL BACKGROUND

In July 2018, Paska Dusaj allegedly suffered personal injuries when an elevator in a building owned by Waterbridge Court Square Holdings, LLC, malfunctioned. Dusaj commenced the action in March 2021, and Waterbridge was served with the summons and complaint but did not appear or answer. Waterbridge claimed that it believed the building's lessee was defending the action because Waterbridge had forwarded the complaint to the lessee, but it did not explain its failure to respond after receiving notice that it had defaulted and after receiving notice of the default-judgment order.

PROCEDURAL HISTORY

The plaintiff commenced a personal-injury action after an elevator malfunction. The defendant was served but failed to appear or answer, and the Supreme Court granted the plaintiff's unopposed motion for leave to enter a default judgment on January 25, 2022. The defendant later moved to vacate that order under CPLR 5015(a)(1), and the Supreme Court, Queens County, granted the motion on March 28, 2023. The Appellate Division reversed and denied the defendant's motion.

DISPOSITION

reversed

CASES CITED

- U.S. Bank Trust, N.A. v. Gomez, 205 AD3d 839, 840
- American Cancer Socy., Inc. v. Ashby, 228 AD3d 805, 806-807
- Uceta v. Sherwood, LLC, 189 AD3d 1114, 1115

OPINION

Dusaj v. Waterbridge Ct. Sq. Holdings, LLC 2025 NY Slip Op 06988

PER CURIAM.

Dusaj v Waterbridge Ct. Sq. Holdings, LLC (2025 NY Slip Op 06988) Dusaj v Waterbridge Ct. Sq. Holdings, LLC 2025 NY Slip Op 06988 Decided on December 17, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 17, 2025

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

LINDA CHRISTOPHER

CARL J. LANDICINO

JAMES P. MCCORMACK, JJ. 2023-05386

(Index No. 707038/21) [*1]Paska Dusaj, appellant, v Waterbridge Court Square Holdings, LLC, respondent, et al., defendant. Hasapidis Law Offices, South Salem, NY (Annette G. Hasapidis of counsel), for appellant. John J. Bello, Jr., New York, NY (Scott B. Pero and White & McSpedon [Irwen Abrams], of counsel), for respondent. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), dated March 28, 2023. The order granted the motion of the defendant Waterbridge Court Square Holdings, LLC, pursuant to CPLR 5015(a)(1) to vacate an order of the same court dated January 25, 2022, which granted the plaintiff's unopposed motion for leave to enter a default judgment against that defendant. ORDERED that the order dated March 28, 2023, is reversed, on the law and in the exercise of discretion, with costs, and the motion of the defendant Waterbridge Court Square Holdings, LLC, pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022, is denied. In July 2018, the plaintiff allegedly was injured when the elevator she was riding in, at a building owned by the defendant Waterbridge Court Square Holdings, LLC (hereinafter the defendant), malfunctioned. In March 2021, the plaintiff commenced this action against the defendant, and another party, to recover damages for personal injuries. The defendant was served with the summons and complaint but failed to appear or answer. The plaintiff thereafter moved for leave to enter a default judgment against the

defendant. In an order dated January 25, 2022, the Supreme Court granted the plaintiff's unopposed motion. In September 2022, the defendant moved pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022. In an order dated March 28, 2023, the court granted the defendant's motion. The plaintiff appeals. "A defendant seeking to vacate a default in answering or appearing pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action" (U.S. Bank Trust, N.A. v Gomez , 205 AD3d 839, 840; see American Cancer Socy., Inc. v Ashby , 228 AD3d 805, 806). "The determination of what constitutes a reasonable excuse lies within the sound discretion of the [Supreme] [C]ourt" (American Cancer Socy., Inc. v Ashby , 228 AD3d at 806 [internal quotation marks omitted]). "In determining whether a reasonable excuse has been shown, a court should consider all the relevant factors, including the extent of the delay, prejudice to the opposing party, whether the default was willful, and the strong public policy in favor of resolving cases on the merits" (id. [internal quotation marks omitted]). The Supreme Court improvidently exercised its discretion in granting the defendant's motion to vacate the order granting the plaintiff's motion for leave to enter a default judgment against the defendant. The defendant's excuse—that it believed the lessee of the building was defending the action and, in effect, appearing and answering the complaint, because the defendant had forwarded the complaint to the lessee—was unreasonable (see id. ; Uceta v Sherwood, LLC , 189 AD3d 1114, 1115). Moreover, although the plaintiff alleged that it had sent a letter to the defendant dated September 10, 2021, informing the defendant that it had defaulted, the defendant failed to acknowledge that allegation. The defendant also failed to explain why it did not respond and appear for more than three months after it was served with notice of entry of the order dated January 25, 2022. Because the defendant failed to proffer a reasonable excuse, it is unnecessary to determine whether it demonstrated the existence of a potentially meritorious defense (see American Cancer Socy., Inc. v Ashby , 228 AD3d at 807; Uceta v Sherwood, LLC , 189 AD3d at 1115). Accordingly, the Supreme Court should have denied the defendant's motion pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022. CHAMBERS, J.P., CHRISTOPHER, LANDICINO and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

Dusaj v Waterbridge Ct. Sq. Holdings, LLC (2025 NY Slip Op 06988) Dusaj v Waterbridge Ct. Sq. Holdings, LLC 2025 NY Slip Op 06988 Decided on December 17, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 17, 2025

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

LINDA CHRISTOPHER

CARL J. LANDICINO

(Index No. 707038/21) [*1]Paska Dusaj, appellant, v Waterbridge Court Square Holdings, LLC, respondent, et al., defendant. Hasapidis Law Offices, South Salem, NY (Annette G. Hasapidis of counsel), for appellant. John J. Bello, Jr., New York, NY (Scott B. Pero and White & McSpedon [Irwen Abrams], of counsel), for respondent. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), dated March 28, 2023. The order granted the motion of the defendant Waterbridge Court Square Holdings, LLC, pursuant to CPLR 5015(a)(1) to vacate an order of the same court dated January 25, 2022, which granted the plaintiff's unopposed motion for leave to enter a default judgment against that defendant. ORDERED that the order dated March 28, 2023, is reversed, on the law and in the exercise of discretion, with costs, and the motion of the defendant Waterbridge Court Square Holdings, LLC, pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022, is denied. In July 2018, the plaintiff allegedly was injured when the elevator she was riding in, at a building owned by the defendant Waterbridge Court Square Holdings, LLC (hereinafter the defendant), malfunctioned. In March 2021, the plaintiff commenced this action against the defendant, and another party, to recover damages for personal injuries. The defendant was served with the summons and complaint but failed to appear or answer. The plaintiff thereafter moved for leave to enter a default judgment against the defendant. In an order dated January 25, 2022, the Supreme Court granted the plaintiff's unopposed motion. In September 2022, the defendant moved pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022. In an order dated March 28, 2023, the court granted the defendant's motion. The plaintiff appeals. "A defendant seeking to vacate a default in answering or appearing pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action" (U.S. Bank Trust, N.A. v Gomez , 205 AD3d 839, 840 ; see American Cancer Socy., Inc. v Ashby , 228 AD3d 805 , 806). "The determination of what constitutes a reasonable excuse lies within the sound discretion of the [Supreme] [C]ourt" (American Cancer Socy., Inc. v Ashby , 228 AD3d at 806 [internal quotation marks omitted]). "In determining whether a reasonable excuse has been shown, a court should consider all the relevant factors, including the extent of the delay, prejudice to the opposing party, whether the default was willful, and the strong public policy in favor of resolving cases on the merits" (id. [internal quotation marks omitted]). The Supreme Court improvidently exercised its discretion in granting the defendant's motion to vacate the order granting the plaintiff's motion for leave to enter a default judgment against the defendant. The defendant's excuse—that it believed the lessee of the building was defending the action and, in effect, appearing and answering the complaint, because the defendant had forwarded the complaint to the lessee—was unreasonable (see id. ; Uceta v Sherwood, LLC , 189 AD3d 1114, 1115). Moreover, although the plaintiff alleged that it had sent a letter to the defendant dated September 10, 2021, informing the defendant that it had defaulted, the defendant failed to acknowledge that allegation. The defendant also failed to explain why it did

not respond and appear for more than three months after it was served with notice of entry of the order dated January 25, 2022. Because the defendant failed to proffer a reasonable excuse, it is unnecessary to determine whether it demonstrated the existence of a potentially meritorious defense (see *American Cancer Socy., Inc. v Ashby* , 228 AD3d at 807; *Uceta v Sherwood, LLC* , 189 AD3d at 1115). Accordingly, the Supreme Court should have denied the defendant's motion pursuant to CPLR 5015(a)(1) to vacate the order dated January 25, 2022. CHAMBERS, J.P., CHRISTOPHER, LANDICINO and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court