

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

Montrose v. Jean-Jacques

2025 N.Y. Slip Op. 06701 (N.Y. Ct. App. 2025) · No. 2023-06721 · Decided December 3, 2025

SUMMARY

The New York Appellate Division, Second Department, affirmed an order denying defendants’ motion to vacate a default judgment and dismiss the complaint as abandoned. The court held that defendants failed to provide a reasonable excuse for their default under CPLR 5015(a)(1), and therefore relief under CPLR 3404 was also unavailable.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Barry E. Warhit, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 3, 2025
DOCKET	2023-06721
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying those branches of their motion that sought, in effect, to vacate a default judgment under CPLR 5015(a)(1) and dismiss the complaint as abandoned under CPLR 3404.
STANDARD OF REVIEW	Whether a defendant has demonstrated a reasonable excuse for a default is committed to the sound discretion of the trial court.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Solange Jean-Jacques, et al. v. Milford Montrose

TOPICS

- default judgment
- default
- motions to dismiss
- civil procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the defendants established a reasonable excuse for their default and a potentially meritorious defense sufficient to vacate the judgment under CPLR 5015(a)(1).
2. Whether the complaint should be dismissed as abandoned under CPLR 3404 after entry of a judgment upon the defendants' default.

HOLDINGS

1. The defendants failed to demonstrate a reasonable excuse for their default because their conclusory and unsubstantiated claim of law office failure amounted to mere neglect. Because they failed to establish a reasonable excuse, the court did not need to consider whether they had a potentially meritorious defense.
2. The defendants were not entitled to dismissal of the complaint as abandoned because the judgment had been entered upon their default and they failed to establish any grounds for relief from that judgment.

KEY QUOTATIONS

*“A defendant seeking to vacate a default in answering or appearing upon the grounds of excusable default pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action” (*2)*

*“Law office failure may be accepted as a reasonable excuse . . . , provided that such an excuse is supported by a detailed and credible explanation for the law office failure alleged to have caused the default” (*2)*

*“Since the defendants failed to establish a reasonable excuse for their default, it is unnecessary to consider whether they had a potentially meritorious defense” (*2)*

FACTUAL BACKGROUND

In 2007, Milford Montrose, who leased an apartment from the defendants, sued for damages arising from assault and conversion of his property. The defendants failed to appear or answer, and the court granted Montrose leave to enter a default judgment. After a 2019 damages inquest, judgment was entered for Montrose in the total amount of \$344,383. The defendants later attributed their default to law office failure, but offered only a conclusory and unsubstantiated explanation.

PROCEDURAL HISTORY

The plaintiff commenced the action in 2007. After the defendants failed to appear or answer, the Supreme Court granted the plaintiff leave to enter a default judgment in 2009. The defendants' subsequent motion to vacate the default was marked off the calendar, an inquest on damages occurred in 2019, and a \$344,383 judgment was entered in 2021. The Supreme Court denied the defendants' later motion to vacate the judgment and dismiss the complaint as abandoned, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Zirrith v. Rego, 230 A.D.3d 626
- Wells Fargo Bank, N.A. v. Lewis, 232 A.D.3d 649
- Wells Fargo Bank, N.A. v. Hakim, 230 A.D.3d 1271
- Yaghmour v. Mittal, 208 A.D.3d 1283
- HSBC Bank USA, N.A. v. Joseph, 209 A.D.3d 633
- Wells Fargo Bank, N.A. v. Eliacin, 206 A.D.3d 950
- Holubar v. Holubar, 89 A.D.3d 802

OPINION

PER CURIAM.

Montrose v Jean-Jacques (2025 NY Slip Op 06701) Montrose v Jean-Jacques 2025 NY Slip Op 06701 Decided on December 3, 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 3, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

BARRY E. WARHIT LOURDES M. VENTURA JAMES P. MCCORMACK, JJ. 2023-06721 (Index No. 26439/07) [*1]Milford Montrose, respondent, v Solange Jean-Jacques, et al., appellants. Law Offices of Michael J.S. Pontone, Esq., P.C., New York, NY, for appellants. Fromartz Law Offices, Brooklyn, NY (D. Bunji Fromartz of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover damages for assault and conversion, the defendants appeal from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated March 23, 2022.

The order, insofar as appealed from, denied those branches of the defendants' motion which were, in effect, pursuant to CPLR 5015(a)(1) to vacate a judgment of the same court dated July 13, 2021, which, upon an order of the same court (Ellen M. Spodek, J.) dated February 9, 2009, granting the plaintiff's motion for leave to enter a default judgment against the defendants upon their failure to appear or answer the complaint, and after an inquest on the issue of damages, is in favor of the plaintiff and against the defendants in the total sum of \$344,383, and thereupon, pursuant to CPLR 3404 to dismiss the complaint as abandoned.

ORDERED that the order dated March 23, 2022, is affirmed insofar as appealed from, with costs. In 2007, the plaintiff, who leased an apartment from the defendants, commenced this action

against the defendants, inter alia, to recover damages for assault and conversion of his property.

The plaintiff subsequently moved for leave to enter a default judgment against the defendants upon their failure to appear or answer the complaint. In an order dated February 9, 2009, the Supreme Court granted the plaintiff's motion.

In or around November 2009, former counsel for the defendants moved pursuant to CPLR 5015(a) and 317 to vacate the defendants' default and to dismiss the complaint or, in the alternative, pursuant to CPLR 3012(d) for leave to serve a late answer. That motion was marked off the calendar on January 25, 2010.

After an inquest was held on the issue of damages in September 2019, a judgment dated July 13, 2021, was entered in favor of the plaintiff and against the defendants in the total sum of \$344,383. The defendants, represented by new counsel, then moved, among other things, in effect, pursuant to CPLR 5015(a)(1) to vacate the judgment, and thereupon, pursuant to CPLR 3404 to dismiss the complaint as abandoned.

In an order dated March 23, 2022, the Supreme Court, inter alia, denied those branches of the defendants' motion. The defendants appeal. "A defendant seeking to vacate a default in answering or appearing upon the grounds of excusable default pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for the [*2]default and a potentially meritorious defense to the action" (*Zirrith v Rego*, 230 AD3d 626, 626 [internal quotation marks omitted]; see *Wells Fargo Bank, N.A. v Lewis*, 232 AD3d 649, 651).

"The determination of what constitutes a reasonable excuse lies within the sound discretion of the trial court" (*Zirrith v Rego*, 230 AD3d at 627 [internal quotation marks omitted]). "Law office failure may be accepted as a reasonable excuse..., provided that such an excuse is supported by a detailed and credible explanation for the law office failure alleged to have caused the default" (*Wells Fargo Bank, N.A. v Hakim*, 230 AD3d 1271, 1273 [citation and internal quotation marks omitted]; see *Yaghmour v Mittal*, 208 AD3d 1283, 1287).

"Mere neglect is not a reasonable excuse" (*Wells Fargo Bank, N.A. v Hakim*, 230 AD3d at 1273 [internal quotation marks omitted]). Here, the defendants "offered only a conclusory and unsubstantiated claim of law office failure amounting to mere neglect" and, thus, failed to demonstrate a reasonable excuse for their default (*id.*; see *HSBC Bank USA, N.A. v Joseph*, 209 AD3d 633, 634).

"Since the defendants failed to establish a reasonable excuse for their default, it is unnecessary to consider whether they had a potentially meritorious defense to the action" (*Wells Fargo, N.A. v Hakim*, 230 AD3d at 1273; see *Yaghmour v Mittal*, 208 AD3d at 1287-1288). Relatedly, since the judgment was entered upon the defendants' default and the defendants have failed to establish any grounds for relief from that judgment, the Supreme Court properly denied that branch of their

motion which was pursuant to CPLR 3404 to dismiss the complaint as abandoned (see Wells Fargo Bank, N.A. v Eliacin, 206 AD3d 950, 952; Holubar v Holubar, 89 AD3d 802, 802).

Accordingly, the Supreme Court properly denied those branches of the defendants' motion which were, in effect, pursuant to CPLR 5015(a)(1) to vacate the judgment, and thereupon, pursuant to CPLR 3404 to dismiss the complaint as abandoned.

The defendants' remaining contentions are without merit. DILLON, J.P., WARHIT, VENTURA and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court