

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

Khan v. Santana

Khan, 2026 NY Slip Op 03432 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-07604 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting the defendant's motion to vacate an earlier order that had restored the plaintiff's personal-injury action to the active calendar. The court held that the defendant was required to show a reasonable excuse for defaulting in opposition and a potentially meritorious opposition, and concluded that the Supreme Court properly granted the motion under CPLR 5015(a)(1).

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.; Lara J. Genovesi, J.; Donna-Marie E. Golia, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 3, 2026
DOCKET	2024-07604
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendant's motion to vacate an earlier order that had vacated a dismissal for abandonment and restored the action to the active calendar.
STANDARD OF REVIEW	Whether a proffered excuse for a default is reasonable is a sui generis determination based on all relevant factors, including the extent of delay, prejudice, willfulness, and the public policy favoring resolution on the merits.
PRECEDENTIAL VALUE	published
PARTIES	Raymond Khan v. Nelson Santana

TOPICS

default

civil procedure

personal injury

appellate procedure

PRACTICE AREAS

civil procedure

personal injury

appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly vacated its prior order granting the plaintiff's unopposed motion to vacate the abandonment dismissal and restore the action.
2. Whether the defendant demonstrated both a reasonable excuse for failing to oppose the plaintiff's motion and a potentially meritorious opposition under CPLR 5015(a)(1).

HOLDINGS

1. A party seeking to vacate an order granting an opposing party's unopposed motion must demonstrate both a reasonable excuse for the default in opposing that motion and a potentially meritorious opposition.
2. The Supreme Court properly granted the defendant's motion to vacate the March 2023 order, and the order dated March 13, 2024, was affirmed insofar as appealed from.

KEY QUOTATIONS

"Under CPLR 5015(a), a court is empowered to vacate a default judgment [or order] for several reasons, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order" (*1)

"Whether a proffered excuse is reasonable is a sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits" (*1)

FACTUAL BACKGROUND

The plaintiff allegedly sustained personal injuries in a 2017 motor-vehicle collision involving a vehicle he was operating and a vehicle operated by the defendant. After an earlier action was dismissed, the plaintiff commenced this action in December 2020. The action was dismissed as abandoned after the plaintiff's attorney failed to appear at a calendar call, and the Supreme Court later vacated that dismissal and restored the action before vacating its restoration order at the defendant's request.

PROCEDURAL HISTORY

The plaintiff commenced this personal-injury action in December 2020 after an earlier action arising from the same alleged motor-vehicle collision had been dismissed. The Supreme Court dismissed this action as abandoned under CPLR 3215(c) after the plaintiff's attorney failed to appear at a calendar call, then granted the plaintiff's unopposed motion to vacate that dismissal and restore the case. On the defendant's motion, the

Supreme Court vacated the restoration order; the Appellate Division affirmed that ruling insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 68
- World O World Corp. v. Anoufrieve, 163 A.D.3d 610, 611

OPINION

Khan v. Santana 2026 NY Slip Op 03432

PER CURIAM.

Khan v Santana - 2026 NY Slip Op 03432 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Khan v Santana 2026 NY Slip Op 03432 June 3, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Raymond Khan, appellant, v Nelson Santana, respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 3, 2026 2024-07604, (Index No. 525439/20) Mark C. Dillon, J.P. Lara J. Genovesi Donna-Marie E. Golia Phillip Hom, JJ. Bogoraz Law Group, P.C. (Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac and Lori E. Parkman], of counsel), for appellant. Nancy L. Isserlis (The Zweig Law Firm, P.C., Cedarhurst, NY [Jonah S. Zweig], of counsel), for respondent. [*1] DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Richard Velasquez, J.), dated March 13, 2024. The order, insofar as appealed from, granted the defendant's motion to vacate an order of the same court (Sharon A. Bourne-Clarke, J.) dated March 1, 2023, granting the plaintiff's unopposed motion (1) to vacate an order of the same court (Joy F. Campanelli, J.) dated November 2, 2022, which granted that branch of the defendant's motion which was pursuant to CPLR 3215(c) to dismiss the complaint as abandoned, and (2) to restore the case to the active calendar. ORDERED that order dated March 13, 2024, is affirmed insofar as appealed from, with costs. The plaintiff allegedly was injured in 2017 due to a motor vehicle collision between a vehicle he was operating and a vehicle operated by the defendant. In August 2020, the plaintiff commenced an action to recover damages for personal injuries against the defendant. Ultimately, that action was dismissed. In December 2020, the plaintiff commenced this action to recover damages for personal injuries against the defendant. In June 2022, the defendant moved, inter alia, pursuant to CPLR 3215(c) to dismiss the complaint

as abandoned. Although the plaintiff submitted opposition papers, his attorney failed to appear at the calendar call and, by order dated November 2, 2022 (hereinafter the dismissal order), the Supreme Court granted that branch of the defendant's motion which was pursuant to CPLR 3215(c) to dismiss the complaint as abandoned. The plaintiff moved pursuant to CPLR 5015 to vacate the dismissal order and to restore the action to the active calendar. By order dated March 1, 2023 (hereinafter the March 2023 order), the Supreme Court granted the plaintiff's unopposed motion. The defendant moved to vacate the March 2023 order. The plaintiff opposed the defendant's motion. In an order dated March 13, 2024, the Supreme Court, inter alia, granted the defendant's motion. The plaintiff appeals. "Under CPLR 5015(a), a court is empowered to vacate a default judgment [or order] for several reasons, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order" (*Woodson v Mendon Leasing Corp.* , 100 NY2d 62, 68). Since the defendant sought to vacate the March 2023 order granting the plaintiff's unopposed motion, the defendant was required to demonstrate both a reasonable excuse for his default in opposing the plaintiff's motion and a potentially meritorious opposition (see *World O World Corp. v Anoufrieve* , 163 AD3d 610 , 611). "Whether a proffered excuse is reasonable is a sui generis determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits" (id. [internal quotation marks omitted]). Here, the Supreme Court properly granted the defendant's motion (see CPLR 5015[a][1]). The appellant's remaining contentions are without merit. Accordingly, we affirm the order dated March 13, 2024, insofar as appealed from. DILLON, J.P., GENOVESI, GOLIA and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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