

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - September 27, 2006

HOWARD MILLER, J.P.  
FRED T. SANTUCCI  
GLORIA GOLDSTEIN  
PETER B. SKELOS  
ROBERT J. LUNN, JJ.

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2005-11762

DECISION & ORDER

A&C Construction Inc. of New York, appellant,  
v Richard J. Flanagan, et al., respondents.

(Index No. 22329/04)

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Steve C. Okenwa, Brooklyn, N.Y., for appellant.

Flanagan & Associates, PLLC, New York, N.Y. (Richard J. Flanagan pro se of  
counsel), for respondents.

In an action to recover damages for legal malpractice, the plaintiff appeals from an order of the Supreme Court, Queens County (Kitzes, J.), dated September 26, 2005, which denied its motion pursuant to CPLR 3215(a) for leave to enter a judgment on the issue of liability against the defendants upon their failure to appear or answer the complaint, and granted the defendants' application for leave to serve a late answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's motion for leave to enter judgment against the defendants pursuant to CPLR 3215(a). The defendants demonstrated both a reasonable excuse for their default and a potentially meritorious defense (*see* CPLR 2005; 5015[a][1]; *Juseinoski v Board of Educ.*, 15 AD3d 353). Furthermore, in light of the lack of prejudice to the plaintiff from the delay, the existence of potentially meritorious defenses, the strong public policy to resolve actions on their merits, and the defendants' lack of willfulness, the Supreme Court properly vacated the default and granted the defendants' application

November 14, 2006

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for leave to serve a late answer (*see New York & Presbyt. Hosp. v American Home Assur. Co.*, 28 AD3d 442; *New York & Presbyt. Hosp. v Auto One Ins. Co.*, 28 AD3d 441; *Nunez v Bertram*, 24 AD3d 523; *Yonkers Rib House v 1789 Cent. Park Corp.*, 19 AD3d 687).

The plaintiff's remaining contentions are without merit.

MILLER, J.P., SANTUCCI, GOLDSTEIN, SKELOS and LUNN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court