

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

D13063  
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Submitted - October 25, 2006

HOWARD MILLER, J.P.  
GABRIEL M. KRAUSMAN  
ROBERT A. SPOLZINO  
STEVEN W. FISHER  
MARK C. DILLON, JJ.

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2006-01634

DECISION & ORDER

Debra Cooney, et al., appellants, v Cambridge  
Management and Realty Corp., respondent,  
et al., defendant.

(Index No. 4273/05)

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Dalli & Marino, LLP (John Dalli and Pollack, Pollack, Isaac & De Cicco, New York,  
N.Y. [Brian J. Isaac] of counsel), for appellants.

Nashak & Andreotta, Melville, N.Y. (Michael G. Nashak of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from so much of an order of the Supreme Court, Nassau County (Feinman, J.), entered January 19, 2006, as granted the motion of the defendant Cambridge Management and Realty Corp., in effect, to vacate its default in appearing and answering, to compel the plaintiffs to accept its untimely answer, and to vacate the note of issue.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court providently exercised its discretion in granting the motion of the defendant Cambridge Management and Realty Corp., in effect, to vacate its default in appearing and answering the complaint, to compel the plaintiffs to accept its untimely answer, and to vacate the note of issue. The moving defendant demonstrated both a reasonable excuse for its delay in answering and the existence of a potentially meritorious defense (*see* CPLR 5015[a][1]; *Ubaydov v Kenny's Fleet Maintenance*, 31 AD3d 536; *Harcztark v Drive Variety*, 21 AD3d 876; *Gang Liang Guo v Shaybane*,

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9 AD3d 382; *Seccombe v Serafina Rest. Corp.*, 2 AD3d 516). Moreover, the plaintiffs did not demonstrate prejudice from the relatively short delay, which was not willful, and public policy favors the resolution of cases on their merits (see *Ubaydov v Kenny's Fleet Maintenance, supra*; *Sound Shore Med. Ctr. v Lumbermens Mut. Cas. Co.*, 31 AD3d 743; *New York & Presbyterian Hosp. v Auto One Ins. Co.*, 28 AD3d 441).

MILLER, J.P., KRAUSMAN, SPOLZINO, FISHER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court