

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

D13831
C/cb

_____AD3d_____

Submitted - January 10, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-11637

DECISION & ORDER

Zulaikho Iskhakova, respondent, v Elizabeth Klages,
defendant, Michael Lukichev, et al., appellants.

(Index No. 29178/02)

Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York, N.Y. (Roy J. Karlin of counsel), for appellants.

Schrier Fiscella & Sussman, LLC, Garden City, N.Y. (James B. Fiscella of counsel),
for respondent.

In an action to recover damages for personal injuries, the defendants Michael Lukichev and Frida Mordukhayeva appeal from an order of the Supreme Court, Kings County (Lewis, J.), dated November 4, 2005, which granted the plaintiff's motion, inter alia, for leave to enter a judgment upon their failure to answer, and denied their cross motion pursuant to CPLR 3125(c) to dismiss the complaint insofar as asserted against them.

ORDERED that the order is reversed, on the law, with costs, the motion, inter alia, for leave to enter a judgment against the defendants Michael Lukichev and Frida Mordukhayeva upon their failure to answer is denied, and the cross motion pursuant to CPLR 3125(c) to dismiss the complaint insofar as asserted against the defendants Michael Lukichev and Frida Mordukhayeva is granted.

The plaintiff offered no reasonable excuse for failing to enter a judgment against the appellants within one year of their failure to answer (*see* CPLR 3215[c]; *Kay Waterproofing Corp.*

February 13, 2007

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v Ray Realty Fulton, 23 AD3d 624, 625; *London v Iceland, Inc.*, 306 AD2d 517; *Piccirillo v Greenspan*, 291 AD2d 486, 486-487). Therefore, the Supreme Court should have denied the plaintiff's motion for leave to enter a judgment against them upon their failure to answer and should have granted the appellants' cross motion pursuant to CPLR 3125(c) to dismiss the complaint insofar as asserted against them.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, 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