

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

D15469
C/gts

_____AD3d_____

Submitted - April 18, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
ROBERT A. LIFSON
THOMAS A. DICKERSON, JJ.

2006-05879

DECISION & ORDER

Donald Levine, et al., appellants, v Forgotson's
Central Auto & Electric, Inc., respondent.

(Index No. 11898/04)

Michael P. Sasso, P.C., Lawrence, N.Y., for appellants.

P.M. Bernstein, P.C., Garden City, N.Y. (Philip M. Bernstein of counsel), for
respondent.

In an action to recover damages for breach of contract and negligence, the plaintiffs appeal from an order of the Supreme Court, Nassau County (Jonas, J.), dated May 10, 2006, which granted the defendant's motion pursuant to CPLR 5015(a)(1), in effect, to vacate its default in complying with so much of a prior order of the same court dated December 5, 2005, as directed it to serve an answer within 20 days from the date of the order, and denied their cross motion pursuant to CPLR 3215 for leave to enter a judgment against the defendant upon its default in appearing or answering the complaint.

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

In light of our determination on the related appeal from the order dated December 5, 2005 (*see Levine v Forgotson's Central Auto & Electric, Inc.*, _____ AD3d _____ [Appellate

June 12, 2007

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LEVINE v FORGOTSON'S CENTRAL AUTO & ELECTRIC, INC.

Division Docket No. 2006-00170, decided herewith]), the instant appeal has been rendered academic.

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, JJ., concur.

ENTER:


James Edward Felger
Clerk of the Court