

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

D16160  
G/hu

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Submitted - June 13, 2007

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

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2006-10322

DECISION & ORDER

Samuel Nikita, etc., et al., appellants, v John N.  
Parfomak, et al., respondents.

(Index No. 17894/06)

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Lipsig, Shapey, Manus & Moverman, P.C. (Pollack, Pollack, Isaac & De Cicco,  
New York, N.Y. [Julie T. Mark and Brian J. Isaac] of counsel), for appellants.

Faust Goetz Schenker & Blee, LLP, New York, N.Y. (Lisa L. Gokhulsingh of  
counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kurtz, J.), dated September 28, 2006, as granted that branch of the defendants' motion which was, in effect, for leave to reargue that branch of the plaintiffs' prior motion which was for leave to enter a judgment against the defendant Kyonk Parfomak, upon his failure to appear or answer, which had been granted in an order dated August 11, 2006, and upon reargument, in effect, vacated the order dated August 11, 2006, denied that branch of the plaintiffs' motion which was for leave to enter a default judgment against the defendant Kyonk Parfomak, and deemed the answer of the defendant Kyonk Parfomak timely served.

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

The Supreme Court properly granted that branch of the defendants' motion which was, in effect, for leave to reargue (*see* CPLR 2221[d]) and, upon reargument, properly, in effect,

September 11, 2007

Page 1.

NIKITA v PARFOMAK

denied that branch of the plaintiffs' prior motion which was for leave to enter a default judgment against the defendant Kyonk Parfomak and in deeming his answer timely served. The defendant Kyonk Parfomak's delay in answering was properly excused given the brief and nondeliberate delay, the lack of prejudice to the plaintiffs, the existence of potentially meritorious defenses, and the policy favoring the resolution of cases on their merits (*see* CPLR 2004; *Stuart v Kushner*, 39 AD3d 535; *Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673; *Yonkers Rib House, Inc. v 1789 Cent. Park Corp.*, 19 AD3d 687).

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