

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

D16335
O/cb

_____AD3d_____

Submitted - September 5, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2006-09813

DECISION & ORDER

G.D. Van Wagenen Financial Services, Inc., as subrogee of Lakeland Bank, respondent, v Michael Sichel, et al., defendants, Government Employees Insurance Company, appellant.

(Index No. 013631/05)

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of counsel), for appellant.

Graham, Miller, Neandross, Mullin & Ronnan, LLC, New York, N.Y. (William Mullin of counsel), for respondent.

In a subrogation action to recover insurance benefits paid to the plaintiff's insured, the defendant Government Employees Insurance Company appeals from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated September 22, 2006, which denied its motion to dismiss the complaint insofar as asserted against it for failure to comply with a 60-day conditional order of preclusion.

ORDERED that the order is reversed, on the law and in the exercise of discretion, with costs, and the motion of the defendant Government Employees Insurance Company to dismiss the complaint insofar as asserted against it is granted.

September 25, 2007

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as subrogee of LAKELAND BANK v SICHEL

As a result of the plaintiff's failure to timely comply with a 60-day conditional order of preclusion, which was served with notice of entry on May 1, 2006, that conditional order became absolute (see *Lee v Arellano*, 18 AD3d 620, 621; *Baturov v Marchewka*, 10 AD3d 345; *Jenkinson v Naccarato*, 286 AD2d 420, 420-421). To be relieved of the adverse impact of the conditional order of preclusion, the plaintiff was required to demonstrate a reasonable excuse for its failure to comply with the order and the existence of a meritorious cause of action (see *Unger v Dover Union Free School Dist.*, 303 AD2d 677; *Goldsmith Motors Corp. v Chemical Bank*, 300 AD2d 440, 441; *Jenkinson v Naccarato*, 286 AD2d at 421). The plaintiff failed to provide a reasonable excuse for its default (see *Deygoo v Eastern Abstract Corp.*, 204 AD2d 596) and failed to demonstrate a meritorious cause of action (cf. *State Farm Mut. Auto. Ins. Co. v Rodriguez*, 12 AD3d 662, 663). Since the final order of preclusion prevented the plaintiff from making a prima facie case against the appellant, the appellant's motion to dismiss the complaint insofar as asserted against it should have been granted (see *Jenkinson v Naccarato*, 286 AD2d at 421; *Michaud v City of New York*, 242 AD2d 369; *Celestin v Delta Intl. Mach. Corp.*, 239 AD2d 309).

SANTUCCI, J.P., GOLDSTEIN, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court