

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

D16994
X/kmg

_____AD3d_____

Submitted - October 31, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2007-00963

DECISION & ORDER

County of Nassau, respondent, v
Donald J. Chmela III, appellant, et al., defendants.

(Index No. 16158/04)

Perry & Campanelli, LLP, Mineola, N.Y. (Andrew J. Campanelli of counsel), for appellant.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of counsel), for respondent.

In a civil forfeiture action, the defendant Donald J. Chmela III appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (McCarty, J.), entered December 7, 2006, as denied that branch of his motion which was to dismiss the action as abandoned pursuant to CPLR 3215(c).

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, without costs or disbursements, and that branch of the motion of the defendant Donald J. Chmela III which was to dismiss the action as abandoned is granted.

“When a plaintiff fails to seek leave to enter a default judgment within one year after the default has occurred, the action is deemed abandoned” (*Kay Waterproofing Corp., v Ray Realty Fulton, Inc.*, 23 AD3d 624, 625; *see* CPLR 3215[c]). “To avoid dismissal of the complaint as abandoned under such circumstances, a plaintiff must offer a reasonable excuse for the delay in moving for leave to enter a default judgment, and must demonstrate that the complaint is meritorious”

November 20, 2007

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(*Kay Waterproofing Corp. v Ray Realty Fulton, Inc.*, 23 AD3d at 625).

Here, the defendant Donald J. Chmela III (hereinafter the defendant) was in default as of March 14, 2005. However, the plaintiff offered no excuse for its failure to take any action in this matter until May 5, 2006, over 13 months later, when it contacted the defendant's former attorney in a related, but now concluded, criminal matter. Under these circumstances, the Supreme Court improvidently exercised its discretion in finding there was a sufficient excuse and in denying that branch of the defendant's motion which sought to dismiss this matter as abandoned (*see Costello v Reilly*, 36 AD3d 581; *Kay Waterproofing Corp. v Ray Realty Fulton, Inc.* 23 AD3d 624; *see generally Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725; *Brill v City of New York*, 2 NY3d 648, 652-654).

RIVERA, J.P., KRAUSMAN, FLORIO, CARNI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court