

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

D17012
W/cb

_____AD3d_____

Submitted - October 30, 2007

GLORIA GOLDSTEIN, J.P.
PETER B. SKELOS
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-02570

DECISION & ORDER

City Line Auto Mall, Inc., appellant, v Citicorp
Leasing, Inc., respondent, et al., defendants.

(Index No. 6731/05)

Ernest H. Hammer, New York, N.Y., for appellant.

Zeichner Ellman & Krause, LLP, New York, N.Y. (Nathan Schwed of counsel), for
respondent.

In an action, inter alia, to recover damages for conversion, the plaintiff appeals from an order of the Supreme Court, Queens County (Weiss, J.), entered February 2, 2006, which granted the motion of the defendant Citicorp Leasing, Inc., pursuant to CPLR 2004 and 3012(d) for an extension of time to answer the complaint or appear in the action and denied its cross motion pursuant to CPLR 3215 for leave to enter a default judgment against that defendant.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the motion of Citicorp Leasing, Inc. (hereinafter Citicorp) for an extension of time to answer the complaint or appear in this action (*see* CPLR 2004, 3012[d]; *see also* CPLR 320[a]), and in denying the plaintiff's cross motion for leave to enter a default judgment against Citicorp. That determination was supported by the relatively brief nature of the delay, the lack of prejudice to the plaintiff, the reasonable excuse for the delay, the evidence of meritorious defenses, the lack of evidence of a willful default or intent to abandon any defenses to the action, and public policy which favors the resolution

November 20, 2007

Page 1.

CITY LINE AUTO MALL, INC. v CITICORP LEASING, INC.

of cases on the merits (*see Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673, 674; *Ahmad v Aniolowiski*, 28 AD3d 692, 693; *New York & Presbyt. Hosp. v Auto One Ins. Co.*, 28 AD3d 441).

GOLDSTEIN, J.P., SKELOS, DILLON 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