

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

D19641
O/kmg

_____AD3d_____

Submitted - May 14, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2008-02173

DECISION & ORDER

Irving Hosten, etc., appellant, v Dele
Oladapo, respondent.

(Index No. 19785/06)

Mark R. Bower, P.C., New York, N.Y., for appellant.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D.
Sweetbaum] of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Kramer, J.), dated January 14, 2008, which denied his renewed motion pursuant to CPLR 3215 for leave to enter judgment against the defendant upon his default in appearing or answering the complaint and for an inquest on the issue of damages, and granted the defendant's cross motion pursuant to CPLR 3102(d) to compel the plaintiff to accept his late answer.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the Supreme Court providently exercised its discretion in denying the plaintiff's renewed motion, inter alia, for leave to enter judgment against the defendant upon his default in appearing or answering the complaint, and granting the defendant's cross motion pursuant to CPLR 3102(d) to compel the plaintiff to accept his late answer. The defendant's "delay in appearing and answering was brief, the default was not willful, and there was

June 17, 2008

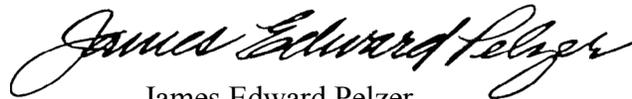
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no evidence that the plaintiff was prejudiced" (*Bunch v Dollar Budget Inc.*, 12 AD3d 391, 391; *see Jolkovsky v Legeman*, 32 AD3d 418; *Friedman v Ostreicher*, 22 AD3d 798, 799). Moreover, public policy favors the resolution of cases on the merits (*see Bunch v Dollar Budget*, 12 AD3d 391).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court