

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

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Submitted - May 21, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-08101

DECISION & ORDER

Hugo Martinez, appellant, v D'Alessandro
Custom Builders & Demolition, Inc., respondent,
et al., defendant.

(Index No. 19287/06)

Trolman, Glaser & Lichtman, P.C., New York, N.Y. (Michael T. Altman of counsel),
for appellant.

Muscarella & DiRaimo, LLP, Garden City, N.Y. (Gary F. Borrelli of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Davis, J.), entered July 12, 2007, which granted the motion of the defendant D'Alessandro Custom Builders & Demolition, Inc., inter alia, to vacate a prior order of the same court entered March 12, 2007, granting his unopposed motion for leave to enter judgment against that defendant upon its default in appearing or answering the complaint, and to compel him to accept its late answer.

ORDERED that the order is reversed, on the law and in the exercise of discretion, with costs, and the motion of the defendant D'Alessandro Custom Builders & Demolition, Inc., inter alia, to vacate the prior order entered March 12, 2007, and to compel the plaintiff to accept its late answer is denied.

A defendant seeking to vacate its default in appearing or answering the complaint must

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provide a reasonable excuse for the default and demonstrate the existence of a meritorious defense to the action (*see* CPLR 5015[a][1]; *Krieger v Cohan*, 18 AD3d 823; *Weinberger v Judlau Contr.*, 2 AD3d 631; *Kaplinsky v Mazor*, 307 AD2d 916). While the determination of what constitutes a reasonable excuse lies within the sound discretion of the Supreme Court (*see Matter of Gambardella v Ortov Light.*, 278 AD2d 494), a general excuse that the default was caused by delays occasioned by the defendant's insurance carrier is insufficient (*see Lemberger v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d 671, 672; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353; *Campbell v Ghafoor*, 8 AD3d 316, 317; *Weinberger v Judlau Contr.*, 2 AD3d 631; *Franklin v Williams*, 2 AD3d 400). In addition, the unverified "affidavit" of the respondent's president and the general denials contained in the verified answer were insufficient to rebut the plaintiff's prima facie showing of a violation of Labor Law § 240(1) (*see Thakurdyal v 341 Scholes St., LLC*, 50 AD3d 889; *Figuroa v Luna*, 281 AD2d 204, 205; *Stein v Yonkers Contr.*, 244 AD2d 473, 474). Accordingly, the Supreme Court improvidently exercised its discretion in granting the respondent's motion, inter alia, to vacate its default in appearing or answering and to compel the plaintiff to accept its late answer.

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court