

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

D20356
C/hu

_____AD3d_____

Argued - June 24, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2007-11031

DECISION & ORDER

Samuel Ayiku, appellant, v John Viteritti, et al.,
respondents.

(Index No. 20897/06)

Parker Waichman Alonso LLP, Great Neck, N.Y. (Ronni Robbins Kravatz of counsel), for appellant.

Stewart H. Friedman, Lake Success, N.Y. (Michael A. Dantuono of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Murphy, J.), entered October 5, 2007, which granted the defendants' motion to vacate an order of the same court entered May 21, 2007, granting the plaintiff's motion for leave to enter a judgment against them upon their failure to appear or answer.

ORDERED that the order entered October 5, 2007, is reversed, on the facts and in the exercise of discretion, with costs, the defendants' motion to vacate the order entered May 21, 2007, is denied, and the order entered May 21, 2007, is reinstated.

The defendants, who sought to have their default in appearing or timely answering the complaint vacated, were required to demonstrate both a reasonable excuse for their default and the existence of a meritorious defense (*see* CPLR 5015[a][1]; *Levi v Levi*, 46 AD3d 519; *Segovia v Delcon Constr. Corp.*, 43 AD3d 1143). They were required to submit supporting facts in evidentiary form sufficient to justify their default (*see White v Incorporated Vil. of Hempstead*, 41 AD3d 709; *Kumar v Yonkers Contr. Co., Inc.*, 14 AD3d 493; *Incorporated Vil. of Hempstead v Jablonsky*, 283 AD2d 553).

September 16, 2008

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The defendants failed to demonstrate, by competent proof, the existence of a reasonable excuse for their default. Accordingly, the Supreme Court improvidently exercised its discretion in granting the defendants' motion to vacate their default (*see Lemberger v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d 671; *Krieger v Cohan*, 18 AD3d 823, 824; *New York Hosp. Med. Ctr. of Queens v Clarendon Natl. Ins. Co.*, 13 AD3d 596; *Abrams v City of New York*, 13 AD3d 566).

SKELOS, J.P., RITTER, FLORIO and CARNI, 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