

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

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_____AD3d_____

Submitted - September 17, 2008

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-10113

DECISION & ORDER

Maria Oliveras, respondent, v Vornado Realty Trust,
et al., defendants, Business Maintenance Services,
LLC, appellant.

(Index No. 25474/05)

Sullivan Law Group, LLP, New York, N.Y. (Robert M. Sullivan and Sara B. Feldman
of counsel), for appellant.

Joseph M. Albanese, Scarsdale, N.Y., for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant Business Maintenance Services, LLC, appeals from so much of an order of the Supreme Court, Kings County (Bayne, J.), dated September 21, 2007, as denied its cross motion to dismiss the complaint pursuant to CPLR 3215(c) on the ground that the plaintiff failed to move for leave to enter a default judgment against it within one year.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court did not improvidently exercise its discretion in denying the defendant's cross motion to dismiss the complaint pursuant to CPLR 3215(c) on the ground that the plaintiff had failed to move for leave to enter a default judgment against it within one year. The plaintiff's counsel adequately explained the reason for the failure, and the plaintiff's affidavit

October 7, 2008

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demonstrated the existence of a meritorious claim (*see State Farm Mut. Auto Ins. v Rodriguez*, 12 AD3d 662; *cf. Costello v Reilly*, 36 AD3d 581).

RIVERA, J.P., FLORIO, ANGIOLILLO, McCARTHY and CHAMBERS, 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