

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

D20643
O/prt

_____AD3d_____

Submitted - September 17, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-09662

DECISION & ORDER

N. Norman Muller, et al., respondents, v
Want & Ender, CPA, P.C., et al., appellants.

(Index No. 4160/04)

Michael Mantell, New York, N.Y., for appellants.

Kaplan Belsky Ross, LLP, Garden City, N.Y. (Susan R. Nudelman and Joel S. Kaplan of counsel), for respondents.

In an action to recover damages for accounting malpractice and fraud, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Galasso, J.), dated September 13, 2007, as denied that branch of their cross motion which was to dismiss the complaint pursuant to CPLR 3215(c) as abandoned, based on the plaintiffs' failure to seek a default judgment within one year.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, and that branch of the defendant's cross motion which was to dismiss the complaint pursuant to CPLR 3215(c) is granted.

To avoid dismissal of the complaint as abandoned pursuant to CPLR 3215(c), the plaintiffs were required to offer a reasonable excuse for their delay in seeking a default judgment and demonstrate that the complaint was meritorious (*see Costello v Reilly*, 36 AD3d 581; *Gleason v Gottlieb*, 35 AD3d 355). Here, the plaintiffs failed to set forth a reasonable excuse for the three-year delay in seeking a default judgment. Accordingly, the Supreme Court improvidently exercised

October 14, 2008

Page 1.

MULLER v WANT & ENDER, CPA, P.C.

its discretion in denying that branch of the defendants' cross motion which was to dismiss the complaint pursuant to CPLR 3215(c).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court