

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

D20707  
X/kmg

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Submitted - September 17, 2008

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
HOWARD MILLER  
THOMAS A. DICKERSON  
RANDALL T. ENG, JJ.

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2007-09580

DECISION & ORDER

Abdolreza Heidari, respondent, v First  
Advance Funding Corp., et al., appellants,  
et al., defendant.

(Index No. 4878/07)

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Mordente Law Firm LLC, Fresh Meadows, N.Y. (Anthony R. Mordente of counsel),  
for appellants.

Mark L. Cortegiano, Middle Village, N.Y., for respondent.

In an action to impress an equitable mortgage upon real property owned by the defendant NY Pride Holdings, Inc., and to recover the proceeds of a loan, the defendants First Advance Funding Corp., NY Pride Holdings, Inc., and Esmaeil Hosseinipour appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Satterfield, J.), dated August 21, 2007, as denied their motion to vacate a prior order of the same court dated May 30, 2007, granting the plaintiff's motion for a preliminary injunction upon their default in opposing the motion, to vacate their default in appearing or answering the complaint, and for leave to serve a late answer nunc pro tunc.

ORDERED that the order dated August 21, 2007, is affirmed insofar as appealed from, with costs.

In seeking to vacate their default in appearing or answering the complaint, the appellants were required to demonstrate a reasonable excuse for their default and a meritorious

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defense to the action (*see* CPLR 5015[a][1]; *Fekete v Camp Skwere*, 16 AD3d 544; *Caputo v Peton*, 13 AD3d 474; *Glibbery v Cosenza & Assoc.*, 4 AD3d 393). The excuse offered by the appellants' attorney failed to adequately explain the default in serving a timely answer. The alleged error, counsel's neglect to give the summons and complaint to his assistant to open a file, cannot account for the more than three-month delay in serving an answer when counsel had full knowledge of the action (*see Ortega v Bisogno & Meyerson*, 38 AD3d 510, 511; *Incorporated Vil. of Hempstead v Jablonsky*, 283 AD2d 553, 553-554; *De Vito v Marine Midland Bank*, 100 AD2d 530, 531). Furthermore, the appellants failed to demonstrate a meritorious defense to the action. Accordingly, those branches of the appellants' motion which were to vacate their default in appearing or answering and for leave to serve a late answer nunc pro tunc were properly denied.

Moreover, the defendants failed to demonstrate that they had a meritorious opposition to the plaintiff's motion for a preliminary injunction (*see Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862; *Ocean Club v Incorporated Vil. of Atl. Beach*, 6 AD3d 593; *Price Paper & Twine Co. v Miller*, 182 AD2d 748). Accordingly, the Supreme Court properly denied that branch of the appellants' motion which was to vacate the order dated May 30, 2007, granting the plaintiff's motion for a preliminary injunction upon the appellants' default in opposing the motion (*see Joseph v GMAC Leasing Corp.*, 44 AD3d 905; *St. Rose v McMorrow*, 43 AD3d 1146).

SPOLZINO, J.P., SANTUCCI, MILLER, DICKERSON and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court