

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

D20991
Y/prt

_____AD3d_____

Submitted - October 8, 2008

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

2007-09623

DECISION & ORDER

William L. Staples, respondent, v Jeff Hunt
Developers, Inc., appellant, et al., defendants.

(Index No. 2355/01)

Vergilis, Stenger, Roberts & Davis, LLP, Wappingers Falls, N.Y. (Kenneth M. Stenger and Lisa M. Cobb of counsel), for appellant.

Marschhausen & Fitzpatrick, P.C., Garden City, N.Y. (Kevin P. Fitzpatrick of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Jeff Hunt Developers, Inc., appeals from an order of the Supreme Court, Dutchess County (Pagones, J.), dated September 19, 2007, which denied that branch of its motion to dismiss the complaint on the ground that the plaintiff failed to seek a default judgment within one year of its default in answering pursuant to CPLR 3215(c), and granted the plaintiff's cross motion for leave to enter a default judgment.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, with costs, that branch of the defendant's motion which was to dismiss the complaint is granted, and the plaintiff's cross motion is denied.

It is uncontroverted that the plaintiff failed to move for leave to enter a default judgment within one year after the defendant defaulted in answering the complaint (*see* CPLR 3215[c]). Accordingly, in order to avoid the dismissal of the complaint as abandoned, he was required to demonstrate a reasonable excuse for his delay in seeking a default judgment and a meritorious cause of action (*see Dubois v Roslyn Nat. Mtge. Corp.*, 52 AD3d 564; *County of Nassau*

November 5, 2008

Page 1.

STAPLES v JEFF HUNT DEVELOPERS, INC.

v Chmela, 45 AD3d 722; *Durr v New York Community Hosp.*, 43 AD3d 388; *Costello v Reilly*, 36 AD3d 581). Although the determination of what constitutes a reasonable excuse lies within the sound discretion of the trial court, reversal is warranted if that discretion is improvidently exercised (*see McHenry v San Miguel*, 54 AD3d 912; *Thompson v Steuben Realty Corp.*, 18 AD3d 864; *London v Iceland Inc.*, 306 AD2d 517). Here, the plaintiff's bald and unsubstantiated claim of law office failure was insufficient to explain the five-year delay in moving for leave to enter a default judgment (*see Costello v Reilly*, 36 AD3d 581; *Matter v Capric*, 54 AD3d 827). Accordingly, the Supreme Court improvidently exercised its discretion in denying that branch of the defendant's motion which was to dismiss the complaint as abandoned and in granting the plaintiff's cross motion for leave to enter a default judgment.

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

ENTER:


James Edward Pelzer
Clerk of the Court