

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

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Submitted - November 12, 2008

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

2008-00047

DECISION & ORDER

Jesse Baldwin, appellant, v Cristino Mateogarcia,
et al., respondents, et al., defendant.

(Index No. 7201/07)

Harry I. Katz, P.C., Fresh Meadows, N.Y. (Shayne, Dachs, Corker, Sauer & Dachs, LLP [Jonathan A. Dachs], of counsel), for appellant.

Weiner Millo & Morgan, LLC, New York, N.Y. (Alexander D. Fisher 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 (McCarty, J.), entered November 30, 2007, which denied his motion for leave to enter a default judgment against the defendants Cristino Mateogarcia and Superior Laundry Services, LLC, upon their failure to appear or answer the complaint, and granted the cross motion of those defendants to extend the time to answer the complaint and to compel him to accept a late answer.

ORDERED that the order is reversed, on the law, with costs, the plaintiff's motion for leave to enter a default judgment against the defendants Cristino Mateogarcia and Superior Laundry Services, LLC, is granted, and the cross motion of those defendants to extend the time to answer the complaint and to compel the plaintiff to accept a late answer is denied.

To successfully oppose a motion for leave to enter a default judgment based upon a failure to appear or timely serve an answer, a defendant must demonstrate a reasonable excuse for

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the delay and the existence of a meritorious defense (*see* CPLR 5015[a][1]; *Miller v Ateres Shlomo, LLC*, 49 AD3d 612; *Giovanelli v Rivera*, 23 AD3d 616; *Mjahdi v Maguire*, 21 AD3d 1067; *Thompson v Steuben Realty Corp.*, 18 AD3d 864, 865; *Dinstber v Fludd*, 2 AD3d 670, 671). Here, the defaulting defendants failed to demonstrate that they had a meritorious defense to the action. The defendants submitted a proposed answer, which was verified only by their attorney, who had no personal knowledge of the facts (*see* *Salch v Paratore*, 60 NY2d 851; *Bekker v Fleischman*, 35 AD3d 334; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353), and an affidavit of a principal of the defendant Superior Laundry, LLC, who likewise had no personal knowledge of the facts. These submissions were insufficient to demonstrate a potentially meritorious defense. The police accident report referable to the incident upon which this action is premised was also insufficient to establish a meritorious defense, since it failed to indicate the source of the reporting officer's information concerning the accident (*see* *Noakes v Rosa*, 54 AD3d 317; *Almestica v Colon*, 304 AD2d 508; *Coughlin v Bartnick*, 293 AD2d 509; *Figueroa v Luna*, 281 AD2d 204).

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

ENTER:



James Edward Pelzer
Clerk of the Court