

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

D21416  
W/kmg

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Submitted - November 12, 2008

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

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2007-07956  
2007-09883

DECISION & ORDER

Helen Jaskiel, et al., appellants,  
v Alex Tsatskis, respondent.

(Index No. 2835/07)

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Herschel Kulefsky, New York, N.Y. (Ephrem J. Wertenteil of counsel), for appellants.

Milber, Makris, Plousadis & Seiden, LLP, White Plains, N.Y. (Lorin A. Donnelly and Sarah M. Ziolkowski of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from (1) an order of the Supreme Court, Kings County (Bayne, J.), dated July 20, 2007, which granted the defendant's motion to vacate a prior order of the same court dated June 8, 2007, granting their motion for leave to enter a default judgment upon the defendant's failure to appear or answer the complaint, and (2) an order of the same court dated September 21, 2007, which, upon reargument, adhered to the original determination in the order dated July 20, 2007.

ORDERED that the appeal from the order dated July 20, 2007, is dismissed, as that order was superseded by the order dated September 21, 2007, made upon reargument; and it is further,

ORDERED that the order dated September 21, 2007, made upon reargument, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

December 9, 2008

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Contrary to the plaintiffs' contention, the defendant, in connection with the original motion for leave to enter a default judgment, did not fully litigate the issues of whether he had a reasonable excuse for his default in appearing or answering the complaint or had a meritorious defense to the action. Consequently, the Supreme Court was not precluded from considering the defendant's subsequent motion pursuant to CPLR 5015(a)(1) to vacate his default in appearing or answering the complaint (*see Szilaski v Aphrodite Constr. Co.*, 247 AD2d 532; *Britvan v Sutton & Edwards*, 226 AD2d 491; *Picinic v Seatrain Lines*, 117 AD2d 504, 507). Moreover, the Supreme Court did not improvidently exercise its discretion in granting the defendant's motion to vacate his default in appearing or answering the complaint since he tendered both a reasonable excuse for his delay in answering the complaint and a potentially meritorious defense (*see Fekete v Camp Skwere*, 16 AD3d 544, 545; *Amato v Fast Repair Inc.*, 15 AD3d 429, 430).

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