

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

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_____AD3d_____

Submitted - March 11, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
RANDALL T. ENG, JJ.

2008-02583

DECISION & ORDER

Cynthia Thompson, etc., appellant, v County of
Suffolk, respondent, et al., defendants.

(Index No. 17578/07)

Ras Associates, PLLC, White Plains, N.Y. (Luis F. Ras of counsel), for appellant.

Christine Malafi, County Attorney, Hauppauge, N.Y. (Marcia J. Lynn of counsel), for
respondent.

In an action to recover damages for negligence and wrongful death, the plaintiff
appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County
(Whelan, J.), dated February 26, 2008, as denied that branch of her motion which was for leave to
enter judgment against the defendant County of Suffolk on the issue of liability, upon its failure to
appear or answer the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

A defendant who has failed to appear or answer the complaint must provide a
reasonable excuse for the default and demonstrate the existence of a meritorious defense to the action
to avoid the entry of a default judgment (*see* CPLR 5015[a][1]; *Eugene Di Lorenzo, Inc. v A.C.
Dutton Lbr. Co.*, 67 NY2d 138, 141; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353, 355-
356; *Ennis v Lema*, 305 AD2d 632, 633). Here, the affirmation of the attorney representing the
defendant County of Suffolk was sufficient to establish that the failure to submit a timely answer was
not willful, but rather, was due to law office failure (*see* CPLR 2005; *Valure v Century 21 Grand*,
35 AD3d 591, 592; *Whitfield v State of New York*, 28 AD3d 541, 542; *Friedman v Crystal Ball*

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Group, Inc., 28 AD3d 514, 515). Furthermore, the County demonstrated the existence of a meritorious defense. Accordingly, the Supreme Court providently exercised its discretion in denying that branch of the plaintiff's motion which was for leave to enter a default judgment against the County.

RIVERA, J.P., DILLON, COVELLO and ENG, 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