

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

D23580  
W/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 20, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

---

2009-00420

DECISION & ORDER

Nechuma Klughaupt, appellant, v Hi-Tower Contractors,  
Inc., defendant, Lynch Park, LLC, respondent.

(Index No. 19043/08)

---

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

Rubin, Fiorella & Friedman, LLP, New York, N.Y. (Leila Cardo of counsel), for  
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Kings County (Miller, J.), dated November 17, 2008, which denied her  
motion for leave to enter a default judgment against the defendant Lynch Park, LLC, and granted that  
defendant's cross motion to vacate its default in answering and for leave to serve a late answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's  
motion for leave to enter a default judgment against the defendant Lynch Park, LLC (hereinafter  
Lynch Park), and in granting Lynch Park's cross motion to vacate its default in answering and for  
leave to serve a late answer (*see* CPLR 5015). Considering the lack of any prejudice to the plaintiff  
as a result of the relatively short three-week delay in serving an answer, the existence of a potentially  
meritorious defense, and the public policy favoring the resolution of cases on the merits, the Supreme  
Court properly excused the de minimis delay in answering (*see Schonfeld v Blue & White Food*

July 7, 2009

Page 1.

KLUGHAUPT v HI-TOWER CONTRACTORS, INC.

*Prods. Corp.*, 29 AD3d 673; *Yonkers Rib House, Inc. v 1789 Cent. Park Corp.*, 19 AD3d 687; *Trimble v SAS Taxi Co., Inc.*, 8 AD3d 557; see e.g. *Perez v Linshar Realty Corp.*, 259 AD2d 532; *Swidler v World-Wide Volkswagen Corp.*, 85 AD2d 239, cf. *Leifer v Pilgreen Corp.*, \_\_\_\_\_ AD3d \_\_\_\_\_, 2009 NY Slip Op 03872 [2d Dept 2009] [10-month delay in moving to vacate default in answering or appearing, with no meritorious defense, does not warrant vacatur of default]).

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court