

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

D23797
C/kmg

_____AD3d_____

Submitted - May 20, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-08494

DECISION & ORDER

Nancy Kramer, plaintiff, v Oil Services, Inc.,
defendant third-party plaintiff-respondent; State Farm
Insurance Company, et al., third-party defendants;
Environmental Services, third-party defendant-appellant.

(Index No. 15096/04)

Cozen O'Connor, P.C., New York, N.Y. (Edward Hayum and Eric Berger of counsel), for third-party defendant-appellant.

Fishman McIntyre, P.C., New York, N.Y. (Scott A. Grossman of counsel), for defendant third-party plaintiff-respondent.

In an action, inter alia, to recover damages for injury to property, the third-party defendant Environmental Services appeals from so much of an order of the Supreme Court, Nassau County (Cozzens, J.), entered August 6, 2008, as denied its motion to vacate a prior order of the same court entered October 4, 2007, granting the defendant third-party plaintiff's unopposed motion for leave to enter judgment on the issue of liability against it, upon its failure to appear or answer.

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

A defendant seeking to vacate its default in appearing or answering the complaint must provide a reasonable excuse for the default and demonstrate the existence of a meritorious defense to the action (*see* CPLR 5015[a][1]; *Lemberger v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d 671, 672; *Krieger v Cohan*, 18 AD3d 823; *Kaplinsky v Mazor*, 307 AD2d 916). The only excuse proffered by the appellant for the default in serving a timely answer was the more than one-year delay

August 4, 2009

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caused by its insurance carrier in providing a defense which, under the circumstances, was insufficient (see *Toland v Young*, 60 AD3d 754; *Martinez v D'Alessandro Custom Bldrs. & Demolition, Inc.*, 52 AD3d 786; *Canty v Gregory*, 37 AD3d 508; *Lemberger v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d at 672; *Krieger v Cohan*, 18 AD3d 823; *Hegarty v Ballee*, 18 AD3d 706). Accordingly, the Supreme Court providently exercised its discretion in denying the appellant's motion.

MASTRO, J.P., FISHER, MILLER, DICKERSON 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