

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

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_____AD3d_____

Submitted - September 23, 2009

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2008-08441

DECISION & ORDER

Marcos Diaz, et al., respondents, v Stephen Ralph,
etc., et al., defendants, Head & Neck Surgical Group,
LLC, appellant.

(Index No. 962/07)

Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Richard E Lerner
and Patrick J. Lawless of counsel), for appellant.

Duffy & Duffy, Uniondale, N.Y. (James N. LiCalzi of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, etc., the defendant Head & Neck Surgical Group, LLC, appeals from an order of the Supreme Court, Suffolk County (Rebolini, J.), dated July 15, 2008, which denied its motion to vacate so much of a prior order of the same court (Baisley, Jr., J.), dated February 19, 2008, as granted the plaintiff's unopposed motion for leave to enter a default judgment upon its failure to appear or answer the complaint.

ORDERED that the order is affirmed, with costs.

To prevail on a motion to vacate its default, a defendant is required to demonstrate both a reasonable excuse therefor and a meritorious defense (*see* CPLR 5015[a][1]; *Fekete v Camp Skwere*, 16 AD3d 544, 545; *Amato v Fast Repair, Inc.*, 15 AD3d 429; *Czarnik v Urban*, 10 AD3d 627).

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The determination of what constitutes a reasonable excuse lies within the trial court's discretion (*see Santiago v New York City Health & Hosps. Corp*, 10 AD3d 393, 394). Here, the appellant presented neither an acceptable excuse for its failure to timely serve an answer nor a meritorious defense. Accordingly, the Supreme Court did not improvidently exercise its discretion in denying the appellant's motion to vacate its default.

FISHER, J.P., FLORIO, ANGIOLILLO, ENG and ROMAN, 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