

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

D24793  
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Submitted - September 23, 2009

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2008-09031

DECISION & ORDER

Vincent J. Finnegan, appellant, v John H. Murphy,  
et al., defendants, Circus Man of Suffolk, Inc.,  
et al., respondents.

(Index No. 26922/07)

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Mulholland, Minion & Roe, Williston Park, N.Y. (Christine M. Gibbons of counsel),  
for appellant.

McCabe, Collins, McGeough & Fowler, LLP, Carle Place, N.Y. (Patrick M. Murphy  
of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (McDonald, J.), entered August 12, 2008, which granted the motion of the defendants Circus Man of Suffolk, Inc., and Circus Man Snacks, Inc., to vacate an order of the same court entered May 9, 2008, as amended by a stipulation dated July 31, 2008, granting the plaintiff's motion for leave to enter a default judgment against them upon their failure to answer the complaint, and to compel the plaintiff to accept their answer.

ORDERED that the order entered August 12, 2008, is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in granting the respondents' motion to vacate their default in answering the complaint and to compel the plaintiff to accept their answer, as the defendants demonstrated both a reasonable excuse for their default and the existence of a potentially meritorious defense (*see Westchester Med. Ctr. v Hartford Cas. Ins.*

October 27, 2009

Page 1.

FINNEGAN v MURPHY

*Co.*, 58 AD3d 832; *Jaskiel v Tsatskis*, 57 AD3d 619; *Hospital for Joint Diseases v Dollar Rent A Car*, 25 AD3d 534; *Fekete v Camp Skwere*, 16 AD3d 544, 545).

RIVERA, J.P., MILLER, BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court