

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

D25088
O/kmg

_____AD3d_____

Submitted - October 28, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-05281

DECISION & ORDER

Guy Sicurella, et al., respondents,
v 111 Chelsea, LLC, appellant.

(Index No. 8067/06)

Andrea G. Sawyers, Melville, N.Y. (Dominic P. Zafonte of counsel), for appellant.

Dell, Little, Trovato & Vecere, LLP, Uniondale, N.Y. (Keri A. Wehrheim of counsel),
for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), dated May 12, 2009, as denied its motion pursuant to CPLR 3215(c) to dismiss the complaint as abandoned.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, and the defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint as abandoned is granted.

To avoid dismissal of the complaint as abandoned pursuant to CPLR 3215(c), the plaintiffs were required to demonstrate a reasonable excuse for their delay in seeking a default judgment and a meritorious cause of action (*see Costello v Reilly*, 36 AD3d 581; *Kay Waterproofing Corp. v Ray Realty Fulton, Inc.*, 23 AD3d 624). Here, the plaintiffs failed to offer a reasonable

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excuse for the three-year delay in seeking a default judgment. Accordingly, the Supreme Court improvidently exercised its discretion in denying the defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint as abandoned.

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, 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