

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

D25324  
H/kmg

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Submitted - October 20, 2009

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
HOWARD MILLER  
L. PRISCILLA HALL, JJ.

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2008-09943

DECISION & ORDER

GMAC Mortgage Corporation, plaintiff-respondent,  
v Tatiana Druchinina, defendant-respondent, et al.,  
defendants, Anthony Samuels, et al., appellants.

(Index No. 23278/06)

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Viscardi, Basner & Bigelow, P.C., Jamaica, N.Y. (Craig K. Tyson of counsel), for appellants.

Steven J. Baum, P.C., Buffalo, N.Y. (Charles D.J. Case of counsel), for plaintiff-respondent.

In an action to foreclose a mortgage, the defendants Anthony Samuels and Brenda Samuels appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Weiss, J.), entered July 21, 2008, as granted the plaintiff's motion to vacate a prior order of the same court dated November 1, 2007, inter alia, granting that branch of their motion which was to dismiss the complaint insofar as asserted against them, upon the plaintiff's default in opposing the motion, and, upon vacatur, denied that branch of their motion.

ORDERED that the order entered July 21, 2008, is affirmed insofar as appealed from, with costs.

The Supreme Court providently exercised its discretion in vacating the prior order dated November 1, 2007, inter alia, granting that branch of the motion of the defendants Anthony Samuels and Branda Samuels which was to dismiss the complaint insofar as asserted against them upon the plaintiff's default in opposing the motion, since the plaintiff demonstrated a reasonable excuse for its default (*see Montefiore Med. Ctr. v Hartford Acc. & Indem. Co.*, 37 AD3d 673, 673-

December 8, 2009

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674; cf. *Lemberger v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d 671; *Bank of N.Y. v Lagakos*, 27 AD3d 678, 679), and had a meritorious claim (see *Washington Mut. Bank, F.A. v O'Connor*, 63 AD3d 832, 833; *Cash v Titan Fin. Servs., Inc.*, 58 AD3d 785, 788; *Daniel Perla Assoc., LP v 101 Kent Assoc., Inc.*, 40 AD3d 677, 678).

The appellants' remaining contentions are without merit.

RIVERA, J.P., FLORIO, MILLER and HALL, 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