

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

D25593  
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Submitted - November 4, 2009

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2009-07092

DECISION & ORDER

Flor Giha, appellant, v Giannos Enterprises, Inc.,  
respondent, et al., defendant.

(Index No. 27238/08)

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Linda T. Ziatz, Ridgewood, N.Y., for appellant.

Furey, Kerley, Walsh, Matera & Cinquemani, P.C., Seaford, N.Y. (Lauren B. Bristol  
of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Mayersohn, J.), dated July 7, 2009, as denied her motion for leave to enter a default judgment on the issue of liability against the defendant Giannos Enterprises, Inc.

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

The Supreme Court providently exercised its discretion in denying the plaintiff's motion for leave to enter a default judgment against the defendant Giannos Enterprises, Inc. (hereinafter the defendant). Considering the lack of any prejudice to the plaintiff as a result of the defendant's relatively short delay in answering, the existence of a potentially meritorious defense, and the public policy favoring the resolution of cases on the merits, we agree with the Supreme Court that, as an exercise of discretion, the defendant's delay in answering was properly excused (*see*

*Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673; *Yonkers Rib House, Inc. v 1789 Cent. Park Corp.*, 19 AD3d 687; *Trimble v SAS Taxi Co. Inc.*, 8 AD3d 557).

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court