

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

D26301
Y/hu

_____AD3d_____

Submitted - January 15, 2010

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-10283

DECISION & ORDER

115-41 St. Albans Holding Corp., appellant, v Estate of Muriel V. Harrison, et al., defendants, Town House St., LLC, respondent.

(Index No. 27853/05)

Busson & Sikorski, New York, N.Y. (Robert S. Sikorski of counsel), for appellant.

Borchert, Genovesi, LaSpina & Landicino, P.C., Whitestone, N.Y. (Helmut Borchert and Robert Frommer of counsel), for respondent.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Queens County (Elliot, J.), dated September 19, 2008, which, inter alia, denied its motion for summary judgment on the complaint and granted the cross motion of the defendant Town House St., LLC, to dismiss the action insofar as asserted against it pursuant to CPLR 3215(c) as abandoned.

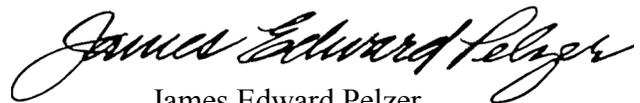
ORDERED that the order is affirmed, with costs.

Although the defendant Town House St., LLC (hereinafter the defendant) served a notice of appearance, it did not serve a responsive pleading (*see* CPLR 3011). Consequently, issue was not joined, and the plaintiff was barred from seeking summary judgment (*see* CPLR 3212[a]; *Alexandru v Pappas*, 68 AD3d 690, 691; *Union Turnpike Assoc., LLC v Getty Realty Corp.*, 27 AD3d 725, 727).

To avoid dismissal of the action as abandoned pursuant to CPLR 3215(c), the plaintiff was required to demonstrate a reasonable excuse for its delay in seeking a default judgment and a meritorious cause of action (*see Sicurella v 111 Chelsea, LLC*, 67 AD3d 996; *Butindaro v Grinberg*, 57 AD3d 932, 932-933; *Staples v Jeff Hunt Devs., Inc.*, 56 AD3d 459, 460; *DuBois v Roslyn Natl. Mtge. Corp.*, 52 AD3d 564, 565; *County of Nassau v Chmela*, 45 AD3d 722; *Durr v New York Community Hosp.*, 43 AD3d 388, 389; *Iskhakova v Klages*, 37 AD3d 542). The plaintiff failed to offer a reasonable excuse for its delay in seeking a default judgment after the defendant failed to serve a responsive pleading. Accordingly, the Supreme Court properly granted the defendant's cross motion pursuant to CPLR 3215(c) to dismiss the action insofar as asserted against it as abandoned.

RIVERA, J.P., DICKERSON, CHAMBERS and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court