

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

D28701
Y/hu

_____AD3d_____

Submitted - September 22, 2010

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-00772

DECISION & ORDER

William Blaut, appellant, v Joseph Berkovits, et al.,
respondents.

(Index No. 8157/09)

Herschel Kulefsky, New York, N.Y. (Ephrem J. Wertenteil of counsel), for appellant.

Hammill, O'Brien, Croutier, Dempsey, Pender & Koehler, P.C., Syosset, N.Y. (Anton Piotroski of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Spodek, J.), dated October 26, 2009, which denied his motion for leave to enter judgment on the issue of liability against the defendants upon their default in answering, and granted the defendants' motion to vacate their default and for leave to serve a late answer.

ORDERED that the order is reversed, on the law, with costs, the plaintiff's motion for leave to enter judgment against the defendants on the issue of liability is granted, and the defendants' motion to vacate their default and for leave to serve a late answer is denied.

The Supreme Court erred in excusing the defendants' default in failing to timely answer the complaint. Although the delay in answering was relatively short, the defendants failed to provide any satisfactory explanation for the delay, and they failed to make any showing of any

October 26, 2010

Page 1.

BLAUT v BERKOVITS

potentially meritorious defense to the plaintiff's claims (*see* CPLR 5015[a][1]; *Giovanelli v Rivera*, 23 AD3d 616; *Mjahdi v Maguire*, 21 AD3d 1067; *Thompson v Steuben Realty Corp.*, 18 AD3d 864; *Dinstber v Fludd*, 2 AD3d 670, 671).

MASTRO, J.P., FLORIO, DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court