

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

D29209  
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Submitted - November 3, 2010

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2010-00359

DECISION & ORDER

Cuervo Farrah, et al., appellants, v Manuel R. Pinos,  
et al., respondents.

(Index No. 15693/07)

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Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for appellants.

Philip J. Rizzuto, P.C., Carle Place, N.Y. (Kristen N. Reed of counsel), for  
respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Queens County (Hart, J.), dated November 20, 2009, which, in effect, denied their motion to vacate a prior order of the same court dated May 7, 2009, granting the defendants' motion for summary judgment dismissing the complaint upon their default in appearing at a hearing on the motion.

ORDERED that the order dated November 20, 2009, is reversed, on the law and in the exercise of discretion, the motion to vacate the order dated May 7, 2009, is granted, and the matter is remitted to the Supreme Court, Queens County, for a determination of the defendants' motion for summary judgment on the merits and upon the papers submitted.

Under the unusual procedural circumstances of this case, and since the record reflects excusable default and a potentially meritorious cause of action, the Supreme Court erred in, in effect, denying the plaintiffs' motion to vacate a prior order dated May 7, 2009 (*see generally* CPLR 5015;

November 30, 2010

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*Ismailov v Cohen*, 26 AD3d 412; *Pelaez v Westchester Med. Ctr.*, 15 AD3d 375). Accordingly, we remit the matter to the Supreme Court, Queens County, for a determination of the motion for summary judgment on the merits and upon the papers submitted.

SKELOS, J.P., SANTUCCI, ANGIOLILLO, HALL and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court