

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

D29245  
C/kmb

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Submitted - November 17, 2010

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
RANDALL T. ENG  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN, JJ.

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2010-04528

DECISION & ORDER

Edmond C. Chakmakian, respondent,  
v Matthew Maroney, et al., appellants.

(Index No. 34934/09)

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Maroney Associates, PLLC (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellants.

Edmond C. Chakmakian, P.C., Hauppauge, N.Y. (Anne Marie Caradonna of counsel), for respondent.

In an action to recover the proceeds of a loan, the defendants appeal from an order of the Supreme Court, Suffolk County (Pines, J.), dated March 23, 2010, which denied their motion for leave to enter a judgment against the plaintiff upon his failure to serve a reply to their counterclaim, and which granted the plaintiffs' application, in effect, to compel them to accept his reply to their counterclaim.

ORDERED that on the Court's own motion, the defendants' notice of appeal from so much of the order as granted the plaintiff's application, in effect, to compel the defendants to accept his reply to their counterclaim is treated as an application for leave to appeal from that portion of the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the defendants'

November 30, 2010

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motion for leave to enter a judgment against the plaintiff upon his failure to serve a reply to their counterclaim, and in granting the plaintiff's application, in effect, to compel the defendants to accept his reply to their counterclaim (*see* CPLR 3012[d]). The defendant failed to show any prejudice resulting from the plaintiff's relatively short delay of approximately three weeks in serving a reply to the counterclaim. Further, in light of the existence of a potentially meritorious defense to the counterclaim, and the public policy favoring the resolution of cases on the merits, the Supreme Court properly excused the plaintiff's failure to serve a timely reply (*see Giha v Giannos Enters., Inc.*, 69 AD3d 564, 565; *Performance Constr. Corp. v Huntington Bldg., LLC*, 68 AD3d 737, 738; *Klughaupt v Hi-Tower Contrs., Inc.*, 64 AD3d 545, 546; *Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673, 674; *see also Merchants Ins. Group v Hudson Val. Fire Protection Co., Inc.*, 72 AD3d 762, 764).

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court