

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

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Submitted - December 10, 2010

JOSEPH COVELLO, J.P.  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

2010-01488

DECISION & ORDER

Moshe Feder, appellant, v Eline Capital Corp.,  
defendant, The Avenue Café, Inc., respondent.

(Index No. 11950/09)

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

Gannon, Lawrence & Rosenfarb, New York, N.Y. (David A. Drossman of counsel),  
for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Spodek, J.), dated December 14, 2009, which denied his motion for leave to enter a default judgment on the issue of liability against the defendant The Avenue Café, Inc., and granted the cross motion of the defendant The Avenue Café, Inc., to compel him to accept late service of its answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's motion for leave to enter a default judgment on the issue of liability against the defendant The Avenue Café, Inc. (hereinafter Avenue Cafe), and in granting Avenue Café's cross motion to compel the plaintiff to accept late service of its answer. Considering the lack of any prejudice to the plaintiff as a result of Avenue Café's relatively short delay in serving its answer, the existence of a potentially meritorious defense, and the public policy favoring the resolution of cases on the merits, the Supreme Court properly excused Avenue Café's delay in answering (*see Wiesel v Friends Exhaust Sys., Inc.*, 71 AD3d 1006; *Falla v Keel Holdings, LLC*, 50 AD3d 844, 845; *Schmidt v City of New York*, 50

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AD3d 664; *Stuart v Kushner*, 39 AD3d 535; *Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673, 674).

COVELLO, J.P., ENG, CHAMBERS and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court