

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

D30283  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 5, 2011

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
JEFFREY A. COHEN, JJ.

---

2010-00800

DECISION & ORDER

Leon Bethune, appellant, v Lorna A. Prioleau,  
respondent.

(Index No. 30835/07)

---

Jonathan Rice, Dobbs Ferry, N.Y., for appellant.

Votto & Cassata, LLP, Staten Island, N.Y. (Christopher J. Albee 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 granted the defendant's motion to vacate a prior order of the same court dated September 29, 2008, granting his unopposed motion for leave to enter a judgment against the defendant upon her default in appearing or answering and, in effect, to compel him to accept the answer, and vacated the note of issue and voided the inquest on the issue of damages.

ORDERED that the order dated December 14, 2009, is reversed, on the law, with costs, the defendant's motion to vacate the order dated September 29, 2008, and, in effect, to compel the plaintiff to accept the answer is denied, and the note of issue and the inquest on the issue of damages are reinstated.

To vacate the order entered upon her default in opposing the motion for leave to enter a default judgment, the defendant was required to demonstrate, inter alia, a reasonable excuse for her default in opposing the motion and a potentially meritorious opposition to the motion (*see NY SMS Waterproofing, Inc. v Congregation Machne Chaim, Inc.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip

March 8, 2011

BETHUNE v PRIOLEAU

Page 1.

Op 00661 [2d Dept 2011]; *Assael v 15 Broad St., LLC*, 71 AD3d 802, 803; *Abdul v Hirschfield*, 71 AD3d 707). The defendant failed to proffer any excuse for her default in opposing the plaintiff's motion for leave to enter a default judgment, or for her lengthy delay in moving to vacate the order entered upon her default (see *NY SMS Waterproofing, Inc. v Congregation Machne Chaim, Inc.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip Op 00661 [2d Dept 2011]; *Assael v 15 Broad St., LLC*, 71 AD3d at 803; *Canty v Gregory*, 37 AD3d 508; *Bekker v Fleischman*, 35 AD3d 334; *Gainey v Anorzej*, 25 AD3d 650, 651). In addition, the defendant failed to demonstrate a potentially meritorious opposition to the plaintiff's motion (see *NY SMS Waterproofing, Inc. v Congregation Machne Chaim, Inc.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip Op 00661 [2d Dept 2011]). Accordingly, the Supreme Court erred in granting the defendant's motion, vacating the note of issue, and voiding the inquest on the issue of damages.

DILLON, J.P., LEVENTHAL, BELEN and COHEN, 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