

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

D30304
O/kmb

_____AD3d_____

Submitted - February 9, 2011

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-03005

DECISION & ORDER

Mitchell Stern, appellant, v Warren George, Inc.,
et al., defendants, Lilly Construction Co., Inc.,
respondent.

(Index No. 10142/03)

Howard M. File, P.C., Staten Island, N.Y. (Martin Rubenstein of counsel), for
appellant.

Platte, Klarsfeld, Levine & Lachtman, LLP, New York, N.Y. (Jeffrey Klarsfeld of
counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited
by his brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.),
dated March 2, 2010, as granted that branch of the motion of the defendant Lilly Construction Co.,
Inc., pursuant to CPLR 317 which was to vacate a judgment of the same court entered August 21,
2007, upon its failure to appear or answer the complaint.

ORDERED that the order dated March 2, 2010, is affirmed insofar as appealed from,
with costs.

The Supreme Court properly granted that branch of the respondent's motion which
was pursuant to CPLR 317 to vacate the judgment entered upon its failure to appear or answer (*see*
CPLR 317; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 142-143; *Taieb v Hilton*
Hotels Corp., 60 NY2d 725, 728; *Reyes v DCH Mgt., Inc.*, 56 AD3d 644; *Franklin v 172 Aububon*
Corp., 32 AD3d 454). The Supreme Court providently exercised its discretion in extending the one-
year limitation period set forth in CPLR 317 in light of the potentially meritorious defense asserted

March 8, 2011

STERN v WARREN GEORGE, INC.

Page 1.

by the respondent, the short delay after the limitation period expired in moving to vacate the judgment, and the public policy of determining actions on the merits (*see CPLR 2004; Girardo v 99-27 Realty, LLC*, 62 AD3d 659, 660; *F & C Gen. Contrs. Corp. v Atlantic Mut. Mtge. Corp.*, 202 AD2d 629, 629-630; *Allen v Preston*, 123 AD2d 303, 303-304; *Levine v Berlin*, 46 AD2d 902, 903).

MASTRO, J.P., ANGIOLILLO, BALKIN, LOTT and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court