

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

D30755
G/prt

_____AD3d_____

Submitted - March 23, 2011

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

2010-06254

DECISION & ORDER

Marilyn Zanelli, appellant, v JMM Raceway, LLC,
et al., defendants, Stasi Brothers Asphalt Corporation,
respondent.

(Index No. 9299/09)

De Caro & Kaplen, LLP, Pleasantville, N.Y. (Michael V. Kaplen and Shana De Caro of counsel), for appellant.

Martyn, Toher & Martyn, Mineola, N.Y. (Joseph S. Holotka of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Butler, J.), entered June 7, 2010, as denied her motion for leave to enter judgment on the issue of liability against the defendant Stasi Brothers Asphalt Corporation, upon its default in appearing or answering the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's motion for leave to enter judgment on the issue of liability against the defendant Stasi Brothers Asphalt Corporation (hereinafter the defendant), upon its default in appearing or answering the complaint. Considering the lack of any prejudice to the plaintiff as a result of the defendant's relatively short delay in answering, the existence of a potentially meritorious defense, and the public

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policy favoring the resolution of cases on the merits, the Supreme Court properly excused the defendant's delay in answering (*see Giha v Giannos Enters., Inc.*, 69 AD3d 564, 565; *Stuart v Kushner*, 39 AD3d 535, 536; *Harcztark v Drive Variety, Inc.*, 21 AD3d 876).

To the extent the plaintiff argues that the Supreme Court should not have granted the defendant leave to serve a late answer, we note that the order appealed from did not grant such relief.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court