

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

D32010
Y/prt/nl

_____AD3d_____

Submitted - April 13, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2010-06783

DECISION & ORDER

Sergio Fuentes, respondent, et al., plaintiffs, v Alonzo
Virgil, defendant, Rosa Martinez, appellant.

(Index No. 17406/99)

Goldberg Segalla, LLP, Mineola, N.Y. (Christopher M. Hart of counsel), for
appellant.

Law Office of Yana Rubin, LLC, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, etc., the defendant Rosa
Martinez appeals from so much of an order of the Supreme Court, Suffolk County (Baisley, Jr., J.),
dated May 5, 2010, as denied that branch of her cross motion which was pursuant to CPLR 3215(c)
to dismiss the complaint insofar as asserted against her by the plaintiff Sergio Fuentes.

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

The defendant Rosa Martinez cross-moved, inter alia, to dismiss the complaint insofar
as asserted against her by the plaintiff Sergio Fuentes as abandoned on the ground that Fuentes
“fail[ed] to take proceedings for the entry of judgment within one year” after she defaulted in this
action (CPLR 3215[c]). However, rather than moving for such relief before Fuentes entered a
default judgment against her, Martinez did not move for such relief until after Fuentes had already
entered the default judgment against her. As such, the Supreme Court properly denied that branch
of Martinez’s cross motion which was to dismiss the complaint insofar as asserted against her by

October 4, 2011

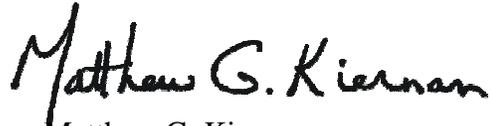
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Fuentes as abandoned pursuant to CPLR 3215(c), as it was untimely (*see* Weinstein-Korn-Miller, NY Civ Prac ¶ 3215.15 [2d ed]).

MASTRO, J.P., FLORIO, 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