

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

D32033
C/prt

_____AD3d_____

Submitted - June 22, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-08854

DECISION & ORDER

Financial Services Vehicle Trust, respondent, v
Law Offices of Dustin J. Dente, et al., defendants,
Katerina Arvanitakis, appellant.

(Index No. 21678/09)

Gordon & Haffner, LLP, Harrison, N.Y. (David E. Gordon and Steven Cohn, P.C., of counsel), for appellant.

Deily, Mooney & Glastetter, LLP, Albany, N.Y. (Alexander Powhida of counsel), for respondent.

In an action for replevin and to recover damages for breach of contract, the defendant Katerina Arvanitakis appeals from an order of the Supreme Court, Nassau County (Cozzens, Jr., J.), entered July 19, 2010, which granted the plaintiff's motion to vacate both an order of the same court (Spinola, J.), dated February 24, 2010, granting the unopposed motion of the defendant Katerina Arvanitakis for leave to enter a judgment on her counterclaim against the plaintiff upon its default in replying to the counterclaim, and a judgment of the same court entered March 1, 2010, in her favor and against the plaintiff in the principal sum of \$1 million.

ORDERED that the order is affirmed, with costs.

The defendant Katerina Arvanitakis (hereinafter the appellant) failed to give the plaintiff timely notice of her motion for leave to enter a judgment on her counterclaim against the plaintiff upon its purported default in replying to the counterclaim (*see Bianco v LiGreci*, 298 AD2d

482). The plaintiff did not receive at least 13 days' notice, the minimum required for motions served by regular mail (*see* CPLR 2103[b][2]; 2214[b]). Absence of proper service of a motion is a sufficient and complete excuse for a default on a motion, and deprives the court of jurisdiction to entertain the motion (*see* CPLR 5015[a][4]; *Zaidi v New York Bldg. Contrs., Ltd.*, 61 AD3d 747, 748; *Daulat v Helms Bros., Inc.*, 32 AD3d 410, 411; *Bianco v LiGreci*, 298 AD2d 482; *Welch v State of New York*, 261 AD2d 537, 538). Since the Supreme Court was deprived of jurisdiction to entertain the motion, the resulting order dated February 24, 2010, and the judgment entered upon that order were nullities (*see* *Bonik v Tarrabocchia*, 78 AD3d 630, 632; *Bauerlein v Salvation Army*, 74 AD3d 851, 857; *Welch v State of New York*, 261 AD2d at 538; *Golden v Golden*, 128 AD2d 672). Accordingly, the plaintiff's motion to vacate both the order dated February 24, 2010, and the judgment was properly granted.

SKELOS, J.P., DICKERSON, HALL, AUSTIN and MILLER, 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