

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

D32627  
H/nl

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Submitted - October 5, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
L. PRISCILLA HALL  
JEFFREY A. COHEN, JJ.

2010-09391

DECISION & ORDER

Roderick Borrie, etc., plaintiff-appellant, v County of Suffolk, respondent, Town of Brookhaven, defendant-appellant, et al., defendant.

(Index No. 7820-09)

Scaffidi & Associates, New York, N.Y. (Robert M. Marino, Anthony J. Scaffidi, Suhlaïl Villa, and Kevin B. Lynch of counsel), for plaintiff-appellant.

Bartlett McDonough & Monaghan, LLP, White Plains, N.Y. (Edward J. Guardaro, Jr., and Megan C. Wagner of counsel), for defendant-appellant.

Christine Malafi, County Attorney, Hauppauge, N.Y. (Diana T. Bishop of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death, the plaintiff appeals, and the defendant Town of Brookhaven separately appeals, as limited by their respective briefs, from so much of an order of the Supreme Court, Suffolk County (Whelan, J.), dated August 3, 2010, as granted that branch of the motion of the defendant County of Suffolk which was for leave to renew its opposition to the plaintiff's cross motion for leave to enter a judgment against that defendant upon its default in answering or appearing, which had been granted in an order of the same court dated March 12, 2010, and upon renewal, in effect, vacated so much of the order dated March 12, 2010, as granted the plaintiff's cross motion and thereupon denied the plaintiff's cross motion.

ORDERED that the appeal by the defendant Town of Brookhaven is dismissed,

October 18, 2011

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without costs or disbursements, as the defendant Town of Brookhaven is not aggrieved by the portion of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed insofar as appealed from by the plaintiff, on the law, that branch of the motion of the defendant County of Suffolk which was for leave to renew its opposition to the plaintiff's cross motion for leave to enter a judgment against it upon its default in answering or appearing is denied, and so much of the order dated March 12, 2010, as granted the plaintiff's cross motion is reinstated; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff, payable by the defendant County of Suffolk.

In opposition to the plaintiff's cross motion for leave to enter a judgment against the defendant County of Suffolk upon its default in answering or appearing, the County was required to demonstrate a reasonable excuse for its default and a potentially meritorious defense to the action (*see* CPLR 5015[a][1]; *Kouziou v Dery*, 57 AD3d 949; *Giovanelli v Rivera*, 23 AD3d 616; *Mjahdi v Maguire*, 21 AD3d 1067, 1068; *see also Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141; *Gray v B.R. Trucking Co.*, 59 NY2d 649, 650). The County failed to proffer a reasonable excuse for its default in answering or for its four-month delay in making an untimely motion pursuant to CPLR 3211(a)(7) (*see* CPLR 320[a], 3211[e]; *Bennett v Hucke*, 64 AD3d 529, 530). On its motion for leave to renew, the County did not offer a reasonable justification for its failure to present the alleged new facts on the prior cross motion (*see* CPLR 2221[d]). Furthermore, the new facts presented by the County failed to demonstrate a reasonable excuse for the default in answering the complaint or appearing in the action (*see White v Daimler Chrysler Corp.*, 44 AD3d 651, 652; *Everything Yogurt v Toscano*, 232 AD2d 604, 606; *P & K Marble v Pearce*, 168 AD2d 439).

Accordingly, that branch of the County's motion which was for leave to renew its opposition to the plaintiff's cross motion for leave to enter a default judgment against it should have been denied.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court