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

D32800
C/prt

_____AD3d_____ Argued - October 17, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2010-06869 DECISION & ORDER

Community Preservation Corporation, respondent, v
Bridgewater Condominiums, LLC, et al., appellants,
et al., defendant.

(Index No. 18682/09)

Sanford Solny, Brooklyn, N.Y., for appellants.

Robinson & Cole LLP, New York, N.Y. (Alan D. Fox, Joseph L. Clasen, and Katherine M. Smith of counsel), for respondent.

In an action to foreclose two mortgages, the defendants Bridgewater Condominiums, LLC, and Benzion Stiel appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Phelan, J.), entered April 29, 2010, as granted that branch of the plaintiff's motion which was for leave to enter a judgment upon their failure to appear or answer, and denied their cross motion pursuant to CPLR 3012(d) to compel the plaintiff to accept their answer as timely.

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

The Supreme Court properly granted that branch of the plaintiff's motion which was for leave to enter a judgment upon the failure of the defendants Bridgewater Condominiums, LLC, and Benzion Stiel (hereinafter together the defendants) to appear or answer, and denied the defendants' cross motion pursuant to CPLR 3012(d) to compel the plaintiff to accept their answer as timely. To successfully oppose the plaintiff's motion, and to "compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and

demonstrate a potentially meritorious defense to the action" (*Ryan v Breezy Point Coop., Inc.,* 76 AD3d 523, 524; *see* CPLR 3012[d]; *Juseinoski v Board of Educ. of City of N.Y.,* 15 AD3d 353, 355-356). Here, the defendants failed to provide a reasonable excuse for the delay in serving their untimely answer. Contrary to the defendants' contention, under the circumstances of this case, their alleged reliance on settlement discussions does not constitute a reasonable excuse (*see Maspeth Fed. Sav. & Loan Assn. v McGown,* 77 AD3d 889, 890; *Kouzios v Dery,* 57 AD3d 949; *Antoine v Bee,* 26 AD3d 306). Furthermore, the defendants failed to demonstrate that they had a potentially meritorious defense to the action (*see Ryan v Breezy Point Coop., Inc.,* 76 AD3d at 524).

The defendants' remaining contentions are not properly before this Court, as they are raised for the first time on appeal (*see Dance Magic, Inc. v Pike Realty, Inc.,* 85 AD3d 1083, 1089).

SKELOS, J.P., HALL, LOTT and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court