

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

D33016
O/kmb

_____AD3d_____

Submitted - November 9, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-00090
2011-00092

DECISION & ORDER

American Home Assurance Company, respondent,
v Abdur Rahim, etc., appellant.

(Index No. 26378/07)

Abdur Rahim, Brooklyn, N.Y., appellant pro se.

Meyers, Saxon & Cole, Brooklyn, N.Y. (Gerald Slotnik of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals from (1) a judgment of the Supreme Court, Kings County (Kurtz, J.H.O.), entered August 25, 2010, upon his failure to answer the complaint or appear for a scheduled trial, which is in favor of the plaintiff and against him in the principal sum of \$43,708, and (2) an order of the same court dated November 22, 2010, which denied his motion to vacate the judgment.

ORDERED that the appeal from the judgment is dismissed, as no appeal lies from a judgment entered upon the default of the appealing party (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

To vacate the judgment entered upon his failure to answer the complaint or appear for a scheduled trial, the defendant was required to demonstrate both a reasonable excuse for his default and a potentially meritorious defense (*see McClaren v Bell Atl.*, 30 AD3d 569; *Kein v Zeno*,

November 22, 2011

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23 AD3d 351; *Rubebauer v Mekelburg*, 22 AD3d 826). The determination of what constitutes a reasonable excuse lies within the trial court's discretion (*see Hageman v Home Depot U.S.A., Inc.*, 25 AD3d 760; *Ruppell v Hair Plus Beauty*, 288 AD2d 205). Contrary to the defendant's contentions, the trial court providently exercised its discretion in rejecting the defendant's proffered excuse for his default. Moreover, the defendant made no showing that he had a potentially meritorious defense to the action.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court