

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

D33298
C/kmb

_____AD3d_____

Submitted - November 30, 2011

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

2011-06636

DECISION & ORDER

Adolph H. Schreiber Hebrew Academy of Rockland, Inc., etc., plaintiff/counterclaim defendant-respondent, v Scott Needleman, defendant/counterclaim plaintiff, Dorit Needleman, defendant/counterclaim plaintiff-appellant.

(Index No. 966/11)

Dorit Needleman, Wesley Hills, N.Y., defendant/counterclaim plaintiff-appellant pro se.

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (James P. Connors and Rebecca J. Waldren of counsel), for plaintiff/counterclaim defendant-respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant/counterclaim plaintiff Dorit Needleman appeals from an order of the Supreme Court, Rockland County (Kelly, J.), entered July 5, 2011, which denied her motion for leave to enter a default judgment against the plaintiff/counterclaim defendant upon its failure to timely interpose a reply to her counterclaims, and granted the plaintiff/counterclaim defendant's cross motion, in effect, to vacate its default, and for leave to serve a late reply to the counterclaims.

ORDERED that the order is affirmed, with costs.

To prevail on a motion to vacate a default, a party is required to demonstrate both a reasonable excuse for its default and a potentially meritorious defense (*see Hospital for Joint*

December 20, 2011

Page 1.

ADOLPH H. SCHREIBER HEBREW ACADEMY OF ROCKLAND, INC. v NEEDLEMAN

Diseases v Dollar Rent A Car, 25 AD3d 534; *Fekete v Camp Skwere*, 16 AD3d 544, 545; *Amato v Fast Repair, Inc.*, 15 AD3d 429, 430; *Czarnik v Urban*, 10 AD3d 627). The determination of what constitutes a reasonable excuse lies within the trial court's discretion (*see Santiago v New York City Health & Hosps. Corp.*, 10 AD3d 393, 394; *Roussodimou v Zafiriadis*, 238 AD2d 568, 569; *Grutman v Southgate At Bar Harbor Home Owners' Assn.*, 207 AD2d 526, 527), and the trial court has the discretion to accept law office failure as a reasonable excuse (*see CPLR 2005; Henry v Kuveke*, 9 AD3d 476, 479; *see also Girona v Katzen*, 19 AD3d 644, 645).

Here, the plaintiff/counterclaim defendant's attorney provided a credible explanation for his failure to timely serve a reply to the amended answer with counterclaims. In addition, the delay was short, only 10 days, and was neither intentional nor a part of a pattern of neglect. Moreover, the plaintiff/counterclaim defendant adequately demonstrated the existence of a potentially meritorious defense to the counterclaims asserted by the defendant/counterclaim plaintiff Dorit Needleman (hereinafter Needleman). Accordingly, it was a provident exercise of discretion to deny Needleman's motion for leave to enter a default judgment on her counterclaims, and to grant the plaintiff/counterclaim defendant's cross motion, in effect, to vacate its default and for leave to serve a late reply to the counterclaims.

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

ENTER:


Aprilanne Agostino
Clerk of the Court