

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

D33457
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_____AD3d_____

Submitted - December 14, 2011

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

2011-01275

DECISION & ORDER

Astrit Karamuco, et al., appellants, v Oz Cohen, et al.,
defendants, Janel Celaj, respondent.

(Index No. 2291/10)

McGivney & Kluger, P.C., New York, N.Y. (Christine Kennedy Flores of counsel),
for appellants.

Rabinowitz & Galina, Mineola, N.Y. (Michael M. Rabinowitz of counsel), for
respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal from an order of Supreme Court, Queens County (Markey, J.), entered December 23, 2010, which denied their motion to vacate a prior order of the same court dated August 10, 2010, granting, without opposition, the motion of the defendant Janel Celaj for summary judgment dismissing the complaint insofar as asserted against her.

ORDERED that the order is affirmed, with costs.

To vacate their default in opposing the motion of the defendant Janel Celaj for summary judgment dismissing the complaint insofar as asserted against her, the plaintiffs were required to demonstrate both a reasonable excuse for their default and a potentially meritorious opposition to the motion (*see Donovan v Chiapetta*, 72 AD3d 635; *Aurora Loan Servs. v Grant*, 70 AD3d 986). The determination of what constitutes a reasonable excuse lies within the trial court's discretion (*see Zarzuela v Castanos*, 71 AD3d 880; *Santiago v New York City Health & Hosps. Corp.*, 10 AD3d 393, 394). Here, the record supports the Supreme Court's determination that the

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plaintiffs' claim of law office failure was sufficient to excuse their failure to oppose Celaj's motion for summary judgment. However, the plaintiffs failed to come forward with any affidavits or documentary evidence of their own to demonstrate that they had a potentially meritorious opposition to Celaj's motion. Accordingly, the court providently exercised its discretion in denying the plaintiffs' motion to vacate their default.

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

ENTER:


Aprilanne Agostino
Clerk of the Court