

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

D33826  
O/prt

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Submitted - January 18, 2012

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

2011-03353

DECISION & ORDER

Carolyn Kohn, etc., respondent, v Tri-State  
Hardwoods, Ltd., appellant, et al., defendant.

(Index No. 14005/07)

Feldman Kieffer, LLP, Buffalo, N.Y. (Adam C. Ferrandino of counsel), for appellant.

In an action to recover damages for personal injuries and wrongful death, etc., the defendant Tri-State Hardwoods, Ltd., appeals from an order of the Supreme Court, Kings County (Schack, J.), dated February 7, 2011, which denied its motion for leave to enter a default judgment on its counterclaim.

ORDERED that the order is affirmed, without costs or disbursements.

It is undisputed that the plaintiff defaulted in serving a reply to the appellant's counterclaim and that the appellant failed to move for leave to enter a default judgment on the counterclaim within one year after the default. Since the appellant failed to make a timely motion for leave to enter a default judgment, it was required to demonstrate a reasonable excuse for its delay in seeking a default judgment and a potentially meritorious claim (*see Giglio v NTIMP, Inc.*, 86 AD3d 301, 308; *Costello v Reilly*, 36 AD3d 581; *Iorizzo v Mattikow*, 25 AD3d 762, 763; *Oparaji v Madison Queens-Guy Brewer*, 293 AD2d 591, 592). The appellant failed to demonstrate a reasonable excuse for its delay of over two years after the one-year statutory time period had expired (*see Butindaro v Grinberg*, 57 AD3d 932, 933; *Mattera v Capric*, 54 AD3d 827, 828; *Lugauer v Forest City Ratner Co.*, 44 AD3d 829, 830; *Opia v Chukwu*, 278 AD2d 394). Accordingly, the appellant's motion for leave to enter a default judgment on the counterclaim was properly denied.

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The appellant's remaining contention is without merit.

SKELOS, J.P., DICKERSON, HALL, ROMAN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court