

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

D35395
Y/ct

_____AD3d_____

Submitted - April 13, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2011-06060

DECISION & ORDER

Peter S. Diuccio, etc., plaintiff/counterclaim defendant-appellant, v Steven J. Soren, et al., defendants/counterclaim plaintiffs-respondents; Gerardo Scott Diuccio, additional counterclaim defendant-appellant.

(Index No. 100273/10)

Blay & Liss, Brooklyn, N.Y. (Stafford M. Liss of counsel), for plaintiff/counterclaim defendant-appellant and additional counterclaim defendant-appellant.

Soren & Soren, Staten Island, N.Y. (Steven J. Soren of counsel), for defendants/counterclaim plaintiffs-respondents.

In an action to recover damages for breach of a lease, the plaintiff/counterclaim defendant and the additional counterclaim defendant appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated May 13, 2011, which granted the motion of the defendants/counterclaim plaintiffs for leave to enter a default judgment against them upon the failure of the plaintiff/counterclaim defendant to timely interpose a reply to the counterclaims and the additional counterclaim defendant's failure to appear or answer the counterclaims, and denied their cross motion to vacate the default of the plaintiff/counterclaim defendant in serving a reply to the counterclaims and the additional counterclaim defendant's default in appearing and serving an answer to the counterclaims and for leave to file and serve a late reply and answer.

ORDERED that the order is affirmed, with costs.

To successfully oppose the motion of the defendants/counterclaim plaintiffs (hereinafter the defendants) for leave to enter a default judgment and to prevail on their cross motion to vacate the default of the plaintiff/counterclaim defendant (hereinafter the plaintiff) in serving a

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reply to the counterclaims and the additional counterclaim defendant's default in appearing or answering the counterclaims, the plaintiff and the additional counterclaim defendant were required to demonstrate a reasonable excuse for their default and a potentially meritorious defense to the counterclaims (*see Adolph H. Schreiber Hebrew Academy of Rockland, Inc. v Needleman*, 90 AD3d 791, 792; *Wells Fargo Bank, N.A. v Cervini*, 84 AD3d 789; *Maurice v Maurice*, 78 AD3d 792, 793; *MMG Design, Inc. v Melnick*, 35 AD3d 823). Since the plaintiff and additional counterclaim defendant failed to offer a reasonable excuse for their default and a potentially meritorious defense, the Supreme Court providently exercised its discretion in granting the defendants' motion for leave to enter a default judgment on the counterclaims and in denying the cross motion of the plaintiff and the additional counterclaim defendant to vacate their respective defaults and for leave to file and serve a late reply and answer.

DILLON, J.P., FLORIO, LOTT and SGROI, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court