

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

D36163  
C/kmb

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Argued - September 11, 2012

RANDALL T. ENG, P.J.  
REINALDO E. RIVERA  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

2012-02442

DECISION & ORDER

Jacqueline A. Maron, etc., et al., respondents,  
v Crystal Bay Imports, Ltd., etc., defendant,  
Honda Lease Trust, appellant.

(Index No. 40948/07)

Segal McCambridge Singer & Mahoney (Lester Schwab Katz & Dwyer, LLP, New York, N.Y. [Steven B. Prystowsky, Howard A. Fried, Annette G. Hasapidis, and Eric A. Portuguese], of counsel), for appellant.

Steven Cohn, P.C., Carle Place, N.Y. (Susan E. Dantzig of counsel), for respondents.

In an action, inter alia, to recover damages for personal injuries and wrongful death, etc., the defendant Honda Lease Trust appeals from an order of the Supreme Court, Kings County (Partnow, J.), dated January 31, 2012, which denied its motion pursuant to CPLR 317 to vacate a judgment of the same court dated November 1, 2011, which, upon an order of the same court dated May 27, 2008, as amended June 17, 2008, granting the plaintiffs' unopposed motion for leave to enter judgment on the issue of liability upon its failure to appear or answer the complaint, and after an inquest on the issue of damages, is in favor of the plaintiffs and against it in the principal sum of \$10,000,000.

ORDERED that the order dated January 31, 2012, is reversed, on the law, with costs, the motion of the defendant Honda Lease Trust pursuant to CPLR 317 to vacate the judgment dated November 1, 2011, is granted, the judgment is vacated, the plaintiffs' motion for leave to enter judgment on the issue of liability is denied, the order dated May 27, 2008, as amended June 17, 2008, is modified accordingly, and the matter is remitted to the Supreme Court, Kings County, for further proceedings.

“Pursuant to CPLR 317, ‘[a] person served with a summons other than by personal

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delivery to him [or her] or his [or her] agent for service designated under [CPLR] 318, within or without the state, who does not appear may be allowed to defend the action' by seeking to vacate a default judgment within one year of learning of the judgment upon demonstrating a potentially meritorious defense" (*Matter of Rockland Bakery, Inc. v B.M. Baking Co., Inc.*, 83 AD3d 1080, 1081, quoting CPLR 317; *see Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 142; *Taieb v Hilton Hotels Corp.*, 60 NY2d 725, 728; *Fleisher v Kaba*, 78 AD3d 1118, 1119; *Cohen v Michelle Tenants Corp.*, 63 AD3d 1097, 1098). The defendant Honda Lease Trust (hereinafter HLT), which was served by service of process upon the Secretary of State, established that it did not receive personal notice of the summons in time to defend (*see Fleisher v Kaba*, 78 AD3d at 1119; *Cohen v Michelle Tenants Corp.*, 63 AD3d at 1098; *Girardo v 99-27 Realty, LLC*, 62 AD3d 659, 660; *Tselikman v Marvin Ct., Inc.*, 33 AD3d 908, 909). Furthermore, there is no basis in the record to conclude that HLT deliberately attempted to avoid notice of the action (*see Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d at 143; *Fleisher v Kaba*, 78 AD3d at 1119; *Cohen v Michelle Tenants Corp.*, 63 AD3d at 1098; *Girardo v 99-27 Realty, LLC*, 62 AD3d at 660; *Tselikman v Marvin Ct., Inc.*, 33 AD3d at 909). In addition, HLT established the existence of a potentially meritorious defense (*see generally* 49 USC § 30106[a]; *Ballatore v HUB Truck Rental Corp.*, 83 AD3d 978, 979; *Burrell v Barreiro*, 83 AD3d 984, 985; *Zegarowicz v Ripatti*, 77 AD3d 650, 652). Accordingly, the Supreme Court should have granted HLT's motion pursuant to CPLR 317 to vacate the judgment, entered upon its failure to appear or answer.

In light of our determination, we need not reach HLT's remaining contentions.

ENG, P.J., RIVERA, HALL and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court