

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

D36274
T/kmb

_____AD3d_____

Submitted - October 3, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-11424

DECISION & ORDER

Oswald Jeffers, appellant, v Bruce L. Stein, etc.,
et al., respondents, et al., defendant.

(Index No. 25746/10)

O. Benjamin Okeke, Brooklyn, N.Y., for appellant.

In an action, inter alia, for a judgment declaring that the plaintiff is the owner of certain real property, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Lewis, J.), dated October 14, 2011, as denied that branch of his motion which was for leave to enter a default judgment against the defendants Bruce L. Stein, as temporary administrator of the estate of Alice Parker Gordon, also known as Ales Parker Gordon, and Cecil D. Worrell, as administrator of the estate of James Gordon, and granted that branch of the cross motion of the defendants Bruce L. Stein, as temporary administrator of the estate of Alice Parker Gordon, also known as Ales Parker Gordon, and Cecil D. Worrell, as administrator of the estate of James Gordon, which was for leave to serve and file a late answer.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court properly denied that branch of the plaintiff's motion which was for leave to enter a default judgment against the defendants Bruce L. Stein, as temporary administrator of the estate of Alice Parker Gordon, also known as Ales Parker Gordon, and Cecil D. Worrell, as administrator of the estate of James Gordon (hereinafter together the Gordon defendants), and properly granted that branch of the Gordon defendants' cross motion which was for leave to serve a late answer, since the Gordon defendants did not default in appearing in this action. On the day this action was commenced, the plaintiff brought an order to show cause in the Supreme Court

October 24, 2012

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seeking a preliminary injunction. The Gordon defendants' attorney appeared in the Supreme Court that day to oppose the plaintiff's order to show cause, and thereafter requested an adjournment of the motion, filed papers in opposition to the motion, and appeared for oral argument on the motion. By these acts, the Gordon defendants made an informal appearance in this action, and are therefore not in default (*see City of Newburgh v 96 Broadway LLC*, 72 AD3d 632, 633; *Carlin v Carlin*, 52 AD3d 559, 561; *Parrotta v Wolgin*, 245 AD2d 872, 873; *Taylor v Taylor*, 64 AD2d 592; *Cohen v Ryan*, 34 AD2d 789, 790).

The plaintiff's remaining contentions have been rendered academic in light of our determination.

ENG, P.J., SKELOS, CHAMBERS and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court