

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1211

CA 10-00886

PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND GREEN, JJ.

JANINE ZENZILLO, DOING BUSINESS AS AUTO
DIMENSIONS PLUS, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

UNDERWRITERS AT LLOYD'S LONDON,
DEFENDANT-APPELLANT.

GINSBERG, BECKER & WEAVER, LLP, NEW YORK CITY (ROBERT D. BECKER OF
COUNSEL), FOR DEFENDANT-APPELLANT.

GEORGE F. ANEY, HERKIMER, HANCOCK & ESTABROOK, LLP, SYRACUSE (JANET D.
CALLAHAN OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County
(Bernadette T. Romano, J.), entered July 9, 2009. The order, insofar
as appealed from, denied the motion of defendant to dismiss the
complaint or vacate the note of issue.

It is hereby ORDERED that the order insofar as appealed from is
unanimously reversed on the law without costs, the motion is granted
and the complaint is dismissed.

Memorandum: Plaintiff commenced this action seeking the amount
allegedly owed pursuant to an insurance policy issued to plaintiff by
defendant. On June 1, 2006, the parties' counsel stipulated to an
indefinite extension of time for defendant to answer the complaint.
By letter dated January 19, 2007, plaintiff's counsel requested that
defendant answer the complaint so that plaintiff could prosecute the
action. Defendant never did so but, on February 3, 2009, it moved to
dismiss the complaint pursuant to, inter alia, CPLR 3215 (c). Supreme
Court erred in denying the motion on that ground. CPLR 3215 (c)
provides that, "[i]f the plaintiff fails to take proceedings for the
entry of judgment within one year after [the defendant's] default, the
court shall . . . dismiss the complaint as abandoned . . . unless
sufficient cause is shown why the complaint should not be dismissed"
(see *Livingston v Livingston*, 303 AD2d 975). In opposition to the
motion, plaintiff included an affirmation from plaintiff's counsel,
who agreed that the January 19, 2007 letter terminated the stipulation
extending defendant's time to answer. Defendant therefore defaulted
20 days after January 19, 2007 by failing to appear in the action (see
CPLR 320 [a]), and plaintiff failed to demonstrate sufficient cause

why the complaint should not be dismissed (see CPLR 3215 [c]).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court