

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

1003

CA 10-02024

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, SCONIERS, AND GORSKI, JJ.

PATRICIA J. CURTO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MARK DIEHL AND MELISSA SCHMIGEL,
DEFENDANTS-RESPONDENTS.
(APPEAL NO. 1.)

PATRICIA J. CURTO, PLAINTIFF-APPELLANT PRO SE.

HAGELIN KENT LLC, BUFFALO (VICTOR M. WRIGHT OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (James H. Dillon, J.), dated December 17, 2009. The order granted the motion of defendants to vacate a default judgment and ordered plaintiff to provide discovery.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: We reject the contention of plaintiff that Supreme Court erred in granting that part of defendants' motion to vacate a default judgment. Inasmuch as defendants had previously appeared in this action, they were entitled to receive notice of plaintiff's motion for a default judgment (*see* CPLR 3215 [g] [1]; *Nowak v Oklahoma League for the Blind*, 289 AD2d 995). Plaintiff failed to provide defendants with such notice, and thus her motion for a default judgment was defective. We have reviewed plaintiff's remaining contentions and conclude that they are without merit.

Entered: September 30, 2011

Patricia L. Morgan
Clerk of the Court