

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

D56512  
Q/htr

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Argued - March 29, 2018

ALAN D. SCHEINKMAN, P.J.  
JEFFREY A. COHEN  
COLLEEN D. DUFFY  
FRANCESCA E. CONNOLLY, JJ.

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2017-02244

DECISION & ORDER

Sandra Marcelli, appellant, v Lorraine Arms  
Apartments, LLC, et al., respondents.

(Index No. 62739/16)

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Vincent Volino PLLC, Yonkers, NY, for appellant.

Babchik & Young, LLP, White Plains, NY (Jack Babchik and Siobhan A. Healy of  
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Mary H. Smith, J.), dated January 19, 2017. The order denied the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment and granted the defendants' cross motion to compel the plaintiff to accept their late answer.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly slipped and fell on snow and ice on an exterior walkway located on property owned and operated by the defendants. She subsequently commenced this action and served the defendants with process via the Secretary of State on October 11, 2016, pursuant to Limited Liability Company Law § 303. On November 25, 2016, the plaintiff moved pursuant to CPLR 3215 for leave to enter a default judgment. On December 22, 2016, 42 days after the defendants' time to answer had expired, the defendants cross-moved pursuant to CPLR 2004 and 3012(d) to compel the plaintiff to accept their late answer. Annexed to the defendants' cross motion was their proposed answer. The Supreme Court denied the plaintiff's motion and granted the defendants' cross motion. The plaintiff appeals.

In light of the lack of prejudice to the plaintiff resulting from the defendants' short

delay in answering the complaint, the lack of willfulness on the part of the defendants, the existence of a potentially meritorious defense, and the public policy favoring the resolution of cases on the merits, the Supreme Court providently exercised its discretion in denying the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against the defendants and in granting the defendants' cross motion to compel the plaintiff to accept their late answer (*see* CPLR 2004; 3012[d]; *Evans v Sandoval*, 121 AD3d 1037; *Hutchinson v New York City Health & Hosps. Corp.*, 118 AD3d 945, 945; *Klein v Yeshiva M'kor Chaim*, 116 AD3d 672, 672; *PDK Labs, Inc. v G.M.G. Trans W. Corp.*, 101 AD3d 970, 972).

SCHEINKMAN, P.J., COHEN, DUFFY and CONNOLLY, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court