

**New World Millworks, Inc. v New York Athletic Club
of City of N.Y.**

2007 NY Slip Op 30469(U)

March 23, 2007

Supreme Court, New York County

Docket Number: 0113878/2006

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

PART **1A** Part 16

Index Number : 113878/2006

NEW WORLD MILLWORKS INC

vs

NY ATHLETIC CLUB OF THE CITY

Sequence Number : 001

DEFAULT JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

APR 02 2007

Upon the foregoing papers, it is ordered that this motion

COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

MAR 23 2007

Dated: _____

Alice Schlesinger

ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION [* 1]

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NEW WORLD MILLWORKS, INC.,

Plaintiff,

-against-

Index No. 113878/06
Motion Seq. No. 001

NEW YORK ATHLETIC CLUB OF THE CITY OF
NEW YORK, MSL PRODUCTIONS, LLC, STRUCTURE
TONE (UK), INC., THE ENVIRONMENTAL CONTROL
BOARD and TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,

Defendants.

-----X
SCHLESINGER, J.:

Plaintiff commenced this action for damages based on breach of contract and to foreclose on a mechanic's lien. The dispute relates to a 2005 contract between plaintiff and defendant MSL Productions wherein plaintiff agreed to provide certain materials for a project at 180 Central Park South in Manhattan. Plaintiff now moves for a default judgment against MSL based on its failure to answer. MSL cross-moves to vacate its default in answering and to extend its time to answer based on excusable default and an alleged meritorious defense. Plaintiff replies that the showing by MSL is insufficient under the law to vacate the default in answering.

In light of the "strong public policy of this State to dispose of cases on their merits," this Court finds that defendant's default in answering should be vacated and MSL should be allowed to file its answer and proceed on the merits. *See, e.g., American Audio Service Bureau v. AT&T Corp.*, 33 AD3d 473, 476 (1st Dep't 2006), citing *Dokmecian v. ABN AMRO North Am.*, 304 AD2d 445 (1st Dep't 2003). The parties agree that the mechanic's lien

claim is being settled as to some co-defendants, and that plaintiff and MSL were also discussing settlement. While it is true that MSL failed to file an answer by the late November deadline set by plaintiff, that failure is attributable to law office failure, is brief in time, and has not prejudiced plaintiff. Also, the affidavit of merit by the Chief Economic Officer of MSL and the proposed answer are sufficient to support the cross-motion.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a default judgment against MSL is denied; and it is further

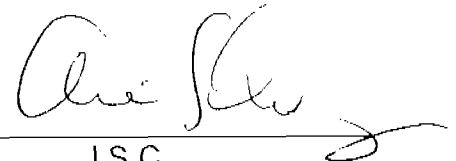
ORDERED that the cross-motion by defendant MSL Productions, LLC is granted to the extent of vacating its default in answering and extending through April 20, 2007 MSL's time to serve and file its answer; and it is further

ORDERED that all parties remaining in the action shall appear before the Court in Room 222 at 60 Centre Street on May 2, 2007 at 9:30 a.m. fully prepared to enter into an expedited discovery schedule. Plaintiff shall notify all affected parties.

This constitutes the decision and order of this Court.

Dated: March 23, 2007

MAR 23 2007



J.S.C.
ALICE SCHLESINGER

FILED

APR 02 2007

COUNTY CLERK'S OFFICE
NEW YORK