

**Diggs v Karen Manor Assoc. LLC**

2012 NY Slip Op 33570(U)

September 28, 2012

Sup Ct, Bronx County

Docket Number: 24963/2001

Judge: Julia I. Rodriguez

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**SUPREME COURT STATE OF NEW YORK  
COUNTY OF BRONX IA- PART 27**

**Present:** JULIA I. RODRIGUEZ, JSC

Index No.: 24963/2001

JOHN DIGGS,

**DECISION & ORDER**

Plaintiff,

-against-

BRONX CLERK OFFICE

KAREN MANOR ASSOCIATES LLC and  
LA PLACITA LATINA,

OCT - 3 2012

Defendant,

Recitation, as required by CPLR 2219 (a), of the papers considered in review of Defendant Karen Manor Associates's motion to vacate default noticed on April 19, 2012 and submitted on May 7, 2012:

<u>Papers Submitted</u>	<u>Numbered</u>
Motion & Exhibits	1
Opposition	2
Reply	3

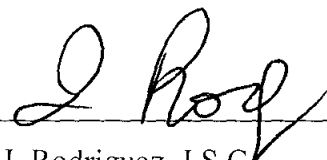
Upon the foregoing papers, motion by Defendant Karen Manor Associates, LLC for an Order vacating its default is **granted**.

Vacating a default judgment is proper upon a showing of excusable default and a meritorious defense to the underlying action. *see, Peacock v. Kalikow*, 239 A.D.2d 188 (1997). Furthermore, "it is strong policy that matters be disposed of on the merits in the absence of real prejudice to the plaintiff." *Moran v. Kynar*, 39 A.D.2d 718 (2<sup>nd</sup> Dept. 1972).

Defendant alleges that it never received service of process, even though the Secretary of State was informed of the proper mailing address for service. Its defense is that the accident occurred inside co-defendant's store where co-defendant is responsible. The court accepts Defendant's excuse and defense and finds that there is no real prejudice, except for the passage of time. However, part of the problem was Plaintiff's delay in settling Order, moving for inquest and entering judgment.

The defendant's motion is hereby **granted** to the extent that the default judgment rendered against defendant in this action is hereby vacated. Defendant shall serve Plaintiff an Answer, along with a copy of this Decision with Notice of Entry. Upon entry of this Order, the court clerk is to restore this action <sup>to</sup> the active calendar.

Dated: September 28, 2012

  
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Hon. Julia I. Rodriguez, J.S.C