

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

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_____AD3d_____

Submitted - September 17, 2008

STEVEN W. FISHER, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-10960

DECISION & ORDER

Sherin Barreno, appellant, v S.K. Foods Corp.,
respondent.

(Index No. 19788/05)

Jonah Grossman, Jamaica, N.Y. (Lawrence B. Lame of counsel), for appellant.

Kaufman Borgeest & Ryan, LLP, Valhalla, N.Y. (Jacqueline Mandell and Dennis J. Dozis of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), dated October 3, 2007, which granted the defendant's motion to vacate a judgment of the same court entered September 29, 2006, which, upon the defendant's default in answering the complaint, and following an inquest on the issue of damages, was in favor of the plaintiff and against it in the principal sum of \$406,000.

ORDERED that the order is affirmed, with costs.

The court did not improvidently exercise its discretion in granting the defendant's motion to vacate its default in answering or appearing. Pursuant to CPLR 317, when a defendant is served with a summons other than by personal delivery and a judgment is thereafter entered upon the defendant's default, the court may vacate the default within one year after the defendant obtains knowledge of the entry of the judgment if the court finds that the defendant did not receive notice of the summons in time to defend and has a meritorious defense (*see Taieb v Hilton Hotels Corp.*, 60 NY2d 725, 728; *Franklin v 172 Aububon Corp.*, 32 AD3d 454, 454-455; *Brockington v Brookfield*

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Dev. Corp., 308 AD2d 498; *Samet v Bedford Flushing Holding Corp.*, 299 AD2d 404, 405). The affidavit of the defendant's president set forth sufficient facts to warrant relief under CPLR 317.

FISHER, J.P., LIFSON, COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court