

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

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CA 09-00906

PRESENT: SMITH, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

SUSAN B. KITTS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

BLOSSOM NORTH, LLC, DOING BUSINESS AS
BLOSSOM NORTH NURSING AND REHABILITATION
CENTER, DEFENDANT-RESPONDENT.
(APPEAL NO. 2.)

DUTCHER & ZATKOWSKY, ROCHESTER (MILES P. ZATKOWSKY OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

UNDERBERG & KESSLER LLP, CANANDAIGUA (MARGARET E. SOMERSET OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (John J. Ark, J.), entered March 23, 2009. The order granted the motion of defendant and vacated two default judgments entered against it.

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

Memorandum: Plaintiff appeals from an order that granted the motion of defendant seeking to vacate two default judgments entered against it as a consequence of its failure to answer the complaint. Contrary to plaintiff's contentions, defendant "establish[ed] both a reasonable excuse for the default[s] and the existence of a meritorious defense" with respect to each default judgment (*Genesee Mgt. v Barrette*, 4 AD3d 874, 875; see *Bilodeau-Redeye v Preferred Mut. Ins. Co.*, 38 AD3d 1277; *Markson v Courtney*, 161 AD2d 1085, 1086). "Given the brief overall delay, the promptness with which defendant moved to vacate the judgment[s], the lack of any intention on defendant's part to abandon the action, plaintiff's failure to demonstrate any prejudice attributable to the delay, and the preference for resolving disputes on the merits," we conclude that Supreme Court properly granted defendant's motion (*Mayville v Wal-Mart Stores*, 273 AD2d 944, 945).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court