

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Merilus v. Nassau Inter County Express (NICE)

2020 NY Slip Op 05500 (N.Y. Ct. App. 2020) · No. 2019-00130 · Decided October 7, 2020

SUMMARY

The Appellate Division, Second Department, affirmed an order denying defendants' motion under CPLR 3215(c) to dismiss the complaint as abandoned and directing them to answer. The court held that the plaintiff's pre-deadline letter to the defendants' insurance carrier demonstrated an intent not to abandon the action, and that law office failure provided a reasonable excuse for the delay. The plaintiff also established a potentially meritorious cause of action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Hector D. LaSalle, J.; Betsy Barros, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	October 7, 2020
DOCKET	2019-00130
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants Jean Daniel and Calixte Ulysse appealed from an order denying their CPLR 3215(c) motion to dismiss the complaint as abandoned and granting the plaintiff's cross-motion, in effect, to direct them to answer the complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's determination concerning the reasonableness of the excuse for delay under an abuse-of-discretion standard.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jean Daniel, Calixte Ulysse v. Marie A. Merilus

TOPICS

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default

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QUESTIONS PRESENTED

1. Whether the complaint should be dismissed as abandoned under CPLR 3215(c) because the plaintiff did not move for a default judgment within one year after the defendants' default.
2. Whether the plaintiff established sufficient cause to excuse the delay by providing a reasonable excuse and demonstrating a potentially meritorious cause of action.
3. Whether the Supreme Court properly directed the defendants to answer the complaint.

HOLDINGS

1. A plaintiff's failure to seek a default judgment within one year after a defendant's default does not require dismissal under CPLR 3215(c) when sufficient cause is shown why the complaint should not be dismissed.
2. To establish sufficient cause under CPLR 3215(c), the plaintiff must provide a reasonable excuse for the delay and demonstrate a potentially meritorious cause of action; the plaintiff satisfied both requirements here.

KEY QUOTATIONS

*“To show sufficient cause, the plaintiff must proffer a reasonable excuse for the delay in timely moving for a default judgment and demonstrate a potentially meritorious cause of action” ([*1])*

FACTUAL BACKGROUND

The plaintiff allegedly sustained personal injuries in a motor vehicle accident and commenced the action in April 2017. Daniel and Ulysse failed to appear or answer the complaint, and the plaintiff did not move for entry of a default judgment within one year after their default. Before the one-year period expired, however, plaintiff's counsel sent a letter to the defendants' insurance carrier notifying it of the default. The plaintiff later attributed the delay to law office failure and supported the merits of her claim through the verified complaint and her affidavit.

PROCEDURAL HISTORY

The plaintiff commenced a personal-injury action in April 2017 after a motor vehicle accident. Daniel and Ulysse failed to appear or answer. After the plaintiff did not move for a default judgment within one year, the defendants moved to dismiss under CPLR 3215(c); the Supreme Court, Nassau County, denied that motion and directed the defendants to answer. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Giglio v. NTIMP, Inc., 86 A.D.3d 301, 307-308
- Bank of Am., N.A. v. Santos, 175 A.D.3d 449, 450
- Butindaro v. Grinberg, 57 A.D.3d 932
- Ingenito v. Grumman Corp., 192 A.D.2d 509, 510-511
- Ferreira v. Singh, 176 A.D.3d 782, 784
- Kohn v. Kohn, 86 A.D.3d 630
- Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 70-71
- Rafiq v. Weston, 171 A.D.2d 783, 784
- Vanderbilt Mtge. & Fin., Inc. v. Ammon, 179 A.D.3d 1138

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