

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

Wilmington Sav. Fund Socy. v. Hyo Choong Sung

2020 NY Slip Op 1956 (App. Div. 2020) · No. 11280; 850163/15 · Decided March 19, 2020

OPINION

PER CURIAM.

Wilmington Sav. Fund Socy. v Hyo Choong Sung (2020 NY Slip Op 01956) Wilmington Sav. Fund Socy. v Hyo Choong Sung 2020 NY Slip Op 01956 Decided on March 19, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on March 19, 2020 Renwick, J.P., Gische, Mazzairelli, Webber, Singh, JJ. 11280 850163/15 [*1]Wilmington Savings Fund Society, etc., Plaintiff-Respondent, vHyo Choong Sung, et al., Defendants. West Fork Capital Equities, LLC, etc., Nonparty Appellant. Fox Horan & Camerini LLP, New York (Anthony R. Filosa of counsel), for appellant. Knuckles, Komosinski & Manfro, LLP, Elmsford (Max T. Saglimbeni of counsel), for respondent.

Order, Supreme Court, New York County (Judith N. McMahon, J.), entered October 24, 2018, which denied nonparty appellant's motion to vacate an order, same court (Carol Edmead, J.), entered on or about February 8, 2017, granting plaintiff's motion for summary judgment; to vacate a judgment of foreclosure and sale, same court (McMahon, J.), entered June 14, 2018; and to dismiss the action, pursuant to CPLR 3215(c), as abandoned, unanimously affirmed, without costs.

The motion court providently exercised its discretion in denying appellant's motion to dismiss the action pursuant to CPLR 3215(c). Plaintiff provided a reasonable excuse for its delay in seeking a default judgment against appellant, i.e., an inadvertent error by plaintiff's counsel in moving for a default judgment against the "non-appearing" defendants only (see *LaValle v Astoria Constr. & Paving Corp.*, 266 AD2d 28 [1st Dept 1999]), and the record otherwise demonstrates that plaintiff did not abandon this action (see e.g. *Street Snacks, LLC v Bridge Assoc. of Soho, Inc.*, 156 AD3d 556, 557 [1st Dept 2017]).

We have considered appellant's remaining arguments, including those in support of vacating the court's prior orders and judgment, and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: MARCH 17, 2020 CLERK

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