

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

Deac v. Il Postino, Inc.

2020 NY Slip Op 08034 (N.Y. Ct. App. 2020) · No. 2018-09667 · Decided December 30, 2020

OPINION

PER CURIAM.

Deac v Il Postino, Inc. (2020 NY Slip Op 08034) Deac v Il Postino, Inc. 2020 NY Slip Op 08034 Decided on December 30, 2020 Appellate Division, Second 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 December 30, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

CHERYL E. CHAMBERS ANGELA G. IANNACCI LINDA CHRISTOPHER, JJ. 2018-09667 (Index No. 22716/12) [*1]Ovidiu Marcel Deac, appellant, vIl Postino, Inc., et al., respondents. Ovidiu Marcel Deac, Maspeth, NY, appellant pro se. DECISION & ORDER In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (David Elliot, J.), dated June 14, 2018.

The order denied the plaintiff's motion, among other things, for summary judgment on the complaint. ORDERED that the order is affirmed, without costs or disbursements. We agree with the Supreme Court's determination denying the plaintiff's motion, inter alia, for summary judgment on the complaint.

The court directed dismissal of the action in an order dated June 29, 2016, which granted, without opposition, the defendants' motion for summary judgment dismissing the complaint. The plaintiff could not move for summary judgment on the complaint without first vacating the order dated June 29, 2016.

The proper procedure for challenging an order made on default is for the defaulting party to move to vacate his or her default, submitting evidence in admissible form demonstrating both a reasonable excuse for his or her default and a potentially meritorious cause of action (see *Countrywide Home Loans, Inc. v Vittorio*, 178 AD3d 1017; *Matter of Renner v Costigan*, 125 AD3d 664, 665; *Matter of Geraldine Rose W.*, 196 AD2d 313, 315-318).

MASTRO, J.P., CHAMBERS, IANNACCI and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court

