



**Jihun Kim et al., Respondents, v S&M Caterers, Inc., Doing Business as Leonard's,
Defendant, and Sansoogapsan II, Inc., Appellant. (Index No. 6378/12)**

2013-00709

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND
DEPARTMENT**

**112 A.D.3d 581; 975 N.Y.S.2d 903; 2013 N.Y. App. Div. LEXIS 7981; 2013 NY Slip Op
8050**

December 4, 2013, Decided

SUBSEQUENT HISTORY: Decision reached on appeal by *Kim v. S&M Caterers, Inc.*, 2016 N.Y. App. Div. LEXIS 939 (N.Y. App. Div. 2d Dep't, Feb. 10, 2016)

upon its failure to appear or answer the complaint.

Ordered that the order dated November 16, 2012, is affirmed, with costs.

HEADNOTES

Judgments--Default Judgment--Vacatur

COUNSEL: [***1] Steptoe & Johnson LLP, New York, N.Y. (John D. Lovi, Michael Rips, and Justin B. Perri of counsel), for appellant.

Steven Louros, New York, N.Y., for respondents.

JUDGES: MARK C. DILLON, J.P., JOHN M. LEVENTHAL, CHERYL E. CHAMBERS, ROBERT J. MILLER, JJ. DILLON, J.P., LEVENTHAL, CHAMBERS and MILLER, JJ., concur.

A defendant seeking to vacate a default must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense to the action (*see CPLR 5015 [a] [1]*; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141, 492 NE2d 116, 501 NYS2d 8 [1986]; *Yao Ping Tang v Grand Estate, LLC*, 77 AD3d 822, 822-823, 910 NYS2d 104 [2010]). "A decision to vacate a prior order or judgment [***2] rests in the sound discretion of the court and will be upheld in the absence of an improvident exercise of that discretion" (*Epps v LaSalle Bus*, 271 AD2d 400, 400, [**904] 705 NYS2d 388 [2000]; *see Kohn v Kohn*, 86 AD3d 630, 928 NYS2d 55 [2011]).

OPINION

[**903] [*581] In an action to recover damages for personal injuries, etc., the defendant Sansoogapsan II, Inc., appeals from an order of the Supreme Court, Queens County (Butler, J.), dated November 16, 2012, which denied its motion pursuant to *CPLR 5015 (a) (1)* to vacate an order of the same court dated August 1, 2012, granting that branch of the plaintiffs' unopposed motion which was for leave to enter a default judgment against it

Here, the appellant did not offer a reasonable excuse for its failure to appear or answer the complaint (*see Maida v Lessing's Rest. Servs., Inc.*, 80 AD3d 732, 733, 915 NYS2d 316 [2011]; *Gartner v Unified Windows, Doors & Siding, Inc.*, 71 AD3d 631, 632, 896 NYS2d 415 [2010]; *Fekete v Camp Skwere*, 16 AD3d 544, 545, 792 NYS2d 127 [2005]). Accordingly, it is unnecessary to consider whether the appellant sufficiently demonstrated the existence of a potentially meritorious defense to the action (*see Maida v Lessing's Rest. Servs., Inc.*, 80 AD3d

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at 733; *Abdul v Hirschfield*, 71 AD3d 707, 709, 898 Miller, JJ., concur.
NYS2d 44 [2010]). Dillon, J.P., Leventhal, Chambers and