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Analysis

As of: Aug 26, 2009

Icon Equipment Distributors, Inc., Respondent, v. Gordon Environmental & Mechanical Corp., Defendant, and Gurpal Cheema, Appellant.

1999-05715

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

272 A.D.2d 579; 709 N.Y.S.2d 426; 2000 N.Y. App. Div. LEXIS 6029

**April 5, 2000, Submitted
May 30, 2000, Decided**

PRIOR HISTORY: **[**1]** In an action, *inter alia*, to foreclose a mechanic's lien, the defendant Gurpal Cheema appeals from an order of the Supreme Court, Kings County (Jackson, J.), dated May 7, 1999, which denied his motion, among other things, to vacate his default in answering and, pursuant to CPLR 3215 (c), to dismiss the complaint as abandoned.

COUNSEL: John Z. Marangos, Staten Island, N.Y., for appellant.

Bernard D'Orazio, P.C., New York, N.Y., for respondent.

JUDGES: Mangano, P. J., Santucci, Krausman, Florio and Schmidt, JJ., concur.

OPINION

[*426] Ordered that the order is affirmed, with costs.

After a hearing on the issue of service of process, it was determined that the summons and complaint were properly served **[*427]** upon the appellant Gurpal Cheema pursuant to CPLR 308 (1). In the absence of a showing of improper service or a meritorious excuse for the default, the appellant's motion to vacate his default in answering the summons and complaint was properly denied (*see*, CPLR 5015 [a] [1], [4]).

Moreover, contrary to the appellant's contention, the plaintiff did not abandon the action. Within one **[**2]** year of the appellant's default, the plaintiff filed a notice of pendency with the Kings County Clerk and moved for a severance and a transfer of this action from Richmond County to Kings County (*see, Home Sav. v Gkanios*, 230 AD2d 770, 771; *Patterson v Patterson*, 220 AD2d 731, 732; *Ingenito v Grumman Corp.*, 192 AD2d 509, 510-511).

Mangano, P. J., Santucci, Krausman, Florio and Schmidt, JJ., concur.