7 A.D.3d 772, 776 N.Y.S.2d 864, 2004 N.Y. Slip Op. 04169
(Cite as: 7 A.D.3d 772, 776 N.Y.S.2d 864)

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Supreme Court, Appellate Division, Second Department, New York.
RAY REALTY FULTON, INC., et al., appellants,
v.
KWANG HEE LEE, respondent.
May 24, 2004.

Certilman Balin Adler & Hyman, LLP, East Meadow, N.Y. (Edward G. McCabe of counsel), for appellants.

Quirk and Bakalor, P.C., New York, N.Y. (Loretta A. Redmond and Liza R. **Fleissig** of counsel), for respondent.

*772 In an action, inter alia, to recover damages for unjust enrichment, the plaintiffs appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated July 8, 2003, which granted the defendant's motion to vacate a judgment of the same court dated December 10, 2001, entered upon his defaults in complying with a self-executing conditional order of preclusion dated January 29, 2001, and appearing at an inquest, to vacate the conditional order of preclusion, and for leave to serve an amended answer.

ORDERED that the order is affirmed, with costs.

CPLR 5015(a)(1) permits a court to vacate a default where the moving party demonstrates both a reasonable excuse for the default and the existence of a meritorious cause of action or defense (*see Orwell Bldg. Corp. v. Bessaha,* 5 A.D.3d 573, 773 N.Y.S.2d 126; *Scarlett v. McCarthy,* 2 A.D.3d 623, 768 N.Y.S.2d 342; *Westchester Med. Ctr. v. Clarendon Ins. Co.,* 304 A.D.2d 753, 757 N.Y.S.2d 765). The determination of what constitutes a reasonable excuse is left to the sound discretion of the court (*see Scarlett v. McCarthy, supra; **865 Westchester Med. Ctr. v. Clarendon Ins. Co., supra; Holt Constr. Corp. v. J & R Music World,* 294 A.D.2d 540, 742 N.Y.S.2d 876). Further, public policy favors a determination of controversies on their merits (*see Scarlett v. McCarthy, supra; Eastern Resource Serv. v. Mountbatten Sur. Co.,* 289 A.D.2d 283, 284, 734 N.Y.S.2d 496). Contrary to the plaintiffs' contention, the Supreme Court providently exercised its discretion in accepting the defendant's excuses for his failure to comply with the self-executing conditional order of preclusion and appear at the inquest (*see Scarlett v. McCarthy, supra; Vita v. Alstom Signaling,* 308 A.D.2d 582, 764 N.Y.S.2d 864; *Crystal Run Sand & Gravel v. Milnor Constr. Corp.,* 301 A.D.2d 491, 752 N.Y.S.2d 894; **773 see also Gorokhova v. Belulovich,* 267 A.D.2d 202, 699 N.Y.S.2d 314). Furthermore, the defendant sufficiently demonstrated the existence of a meritorious defense to the action. We also note that although the motion to vacate the conditional order of preclusion was made more than one year after it became absolute, the Supreme Court has inherent discretionary power to vacate a default which is not subject to the one-year limitations period set forth in CPLR 5015 (*see Hunter v. Enquirer/Star, Inc.,* 210 A.D.2d 32, 619 N.Y.S.2d 268; *F & C Gen. Contrs. Corp. v. Atlantic Mut. Mtge. Corp.,* 202 A.D.2d 629, 612 N.Y.S.2d 871; *Luna Baking Co. v. Myerwold,* 69 A.D.2d 832, 415 N.Y.S.2d 88).

The plaintiffs' remaining contentions are without merit.

FLORIO, J.P., KRAUSMAN, COZIER and RIVERA, JJ., concur.
N.Y.A.D. 2 Dept. 2004.
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