

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----X
CLAUDE ANDRE,

Index No.: 403334/02

Plaintiff-Appellant,

-against-

CLEMENT JONES, SHIRLEY JONES,

NOTICE OF ENTRY

NEW YORK
COUNTY CLERK'S OFFICE

Defendants-Respondents,

JUN 28 2007

THE CITY OF NEW YORK AND THE NEW YORK CITY
DEPARTMENT OF CORRECTIONS,

NOT COMPARED
WITH COPY FILED

Defendants.

-----X

PLEASE TAKE NOTICE that the attached is a true copy of a Decision/Order in
this matter that was entered in the Office of the County Clerk of New York County, on the 14th day
of June, 2007.

Dated: Garden City, N.Y.
June 18, 2007

MASSIMO & PANETTA, P.C.

BY: *Nicholas J. Massimo*

NICHOLAS J. MASSIMO, ESQ.

99 Quentin Roosevelt Boulevard
Suite 201
Garden City, New York 11530
(516) 683-8880

TO: MONACO & MONACO, L.L.P.
Attorneys for Plaintiff-Appellant
7610-7612 13th Ave., 2nd Floor
Brooklyn, New York 11228
(718) 872-0533

And Courtesy Copy To:
MICHAEL A. CARDOZO, ESQ.
Attorney for Defendants
THE CITY OF NEW YORK and THE NEW YORK
CITY DEPARTMENT OF CORRECTIONS
100 Church Street
New York, New York 10007
(212) 788-0628

Andrias, J.P., Saxe, Friedman, Nardelli, Malone, JJ.

Index 403334/02

1327 Claude Andre,
Plaintiff-Appellant,

-against-

Clement Jones, et al.,
Defendants-Respondents,

The City of New York, et al.,
Defendants.

Monaco & Monaco, LLP, Brooklyn (Antonio Monaco, Jr. of counsel),
for appellant.
Massimo & Panetta, P.C., Garden City (Nicholas J. Massimo of
counsel), for respondents.

Order, Supreme Court, New York County (Michael D. Stallman,
J.), entered June 9, 2006, which granted defendants' motion to
vacate the order dated December 6, 2005, precluding them from
offering evidence at trial, unanimously affirmed, without costs.

Defendants' explanations for their failure to appear for
three compliance conferences, i.e., that they believed they were
represented by attorneys who had been substituted in place of
their original, but since suspended, attorney, and were not
notified of the conferences, are reasonable and adequate to
support their motion for vacatur of the order of preclusion
entered in consequence of their non-appearances (see *Simmons v*
Pantoja, 306 AD2d 399 [2003]). While plaintiff's attorney sent
letters notifying defendants of the two latter court dates, the
record indicates that they were sent to an incorrect address.

The claim that the complained-of acts by defendant Clement Jones were performed in self-defense sets forth a defense sufficiently meritorious for the purpose of vacatur (see 5015[a] [1]; see *Tat Sang Kwong v Budge-Wood Laundry Serv.*, 97 AD2d 691 [1983]).

M-2358E

M-2682 - *Andre v Jones, et al.*

Motions seeking leave to supplement record and to strike material denied.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 14, 2007


DAVID A. SPADARO
DEPUTY CLERK

AFFIDAVIT OF MAILING/SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

NICHOLAS J. MASSIMO, being duly sworn, deposes and says:

I am not a party to this action. I am over the age of 18 years and I reside in New York, the County of New York, State of New York.

On June 18, 2007, I placed a copy of the annexed:

DECISION AND ORDER with NOTICE OF ENTRY


Upon the following parties:

MONOCO & MONOCO, LLP
Attorneys for Plaintiff-Appellant Claude Andre
7610-7612 13th Avenue, 2nd Floor
BROOKLYN, NEW YORK 11228

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State by regular mail.

A courtesy copy was served in the same manner on June 18, 2007 to defendants not a party of this appeal:

THE CITY OF NEW YORK and
THE NEW YORK CITY DEPARTMENT OF CORRECTIONS
MICHAEL A. CARDOZO, ESQ.
100 Church Street, 4th Floor
New York, N.Y. 10007


NICHOLAS J. MASSIMO
Massimo & Panetta, P.C.
99 Quentin Roosevelt Blvd, Suite 201
Garden City, New York 11530

Sworn to me this 18th day of
June, 2007


NOTARY PUBLIC
SILVIA RUSSO

Notary Public, State Of New York
No. 01RU4772108
Qualified In Nassau County