



LINDA CAMPION v. ALERT COACH LINES

524 N.Y.S.2d 738 (1988) | Cited 0 times | New York Supreme Court | February 16, 1988

In an action, inter alia, to recover damages for assault, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Brown, J.), dated December 2, 1986, which (1) denied the plaintiff's motion for leave to enter a default judgment in favor of her and against the defendants Alert Coach Lines, Inc., and Jane Weber, and (2) granted the cross motion of those defendants to vacate their default in answering the complaint, on condition, inter alia, that they pay to the plaintiff the sum of \$500 as and for costs.

Ordered that the appeal is dismissed, with costs.

The motion of the defendants Alert Coach Lines, Inc. and Jane Weber, to vacate their default in answering the complaint was granted by the Supreme Court on condition that they pay to the plaintiff the sum of \$500 as and for costs. It appears that (1) those defendants thereafter tendered a \$500 check made payable to the plaintiff and her attorney, and (2) the check was endorsed and deposited. Under these circumstances, the acceptance and retention of the costs awarded by the court operates as a waiver of plaintiff's right to appeal (*N & J Foods v Shopwell Plaza Corp.*, 63 A.D.2d 899; *Harris v Resnikoff*, 118 A.D.2d 622).

