

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12710
O/nl

_____AD3d_____

Submitted - October 11, 2006

THOMAS A. ADAMS, J.P.
GABRIEL M. KRAUSMAN
REINALDO E. RIVERA
ROBERT A. LIFSON, JJ.

2005-09121

DECISION & ORDER

Mona Giovanni, respondent, v James Moran, d/b/a
Cabinet Emporium, appellant.

(Index No. 17491/00)

James Moran, Valley Stream, N.Y., appellant pro se.

In an action, inter alia, to recover damages based on breach of contract, the defendant appeals from so much of an order of the Supreme Court, Nassau County (Lally, J.), entered September 7, 2005, as denied his cross motion for leave to renew his prior motion to vacate a judgment entered upon his default in appearing or answering.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The court providently exercised its discretion in denying the defendant's cross motion for leave to renew because he failed to present "new facts" which were unavailable at the time of the original motion and which would change the prior determination (*see* CPLR 2221[e]; *Town House St., LLC v New Fellowship Full Gospel Baptist Church*, 29 AD3d 894; *Matter of Rush v County of Nassau*, 24 AD3d 560, 561; *Almonte v Western Beef*, 21 AD3d 516, 516-517; *Johnson v Marquez*, 2 AD3d 786, 788-789).

ADAMS, J.P., KRAUSMAN, RIVERA and LIFSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

November 28, 2006

GIOVANNI v MORAN, d/b/a CABINET EMPORIUM