

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

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_____AD3d_____

Argued - November 28, 2006

HOWARD MILLER, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT J. LUNN, JJ.

2006-01821

DECISION & ORDER

Errol R. Alexander, et al., plaintiffs, v New York City Transit Authority, defendant third-party plaintiff-appellant; L.A. Wenger Contracting Co., Inc., third-party defendant-respondent (and a fourth-party action).

(Index Nos. 13180/00, 75687/01 and 75708/01)

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Louis Klein of counsel), for defendant third-party plaintiff-appellant.

Morris, Duffy, Alonso & Faley, LLP, New York, N.Y. (Anna J. Ervolina and Andrea M. Alonso of counsel), for third-party defendant-respondent.

In an action to recover damages for personal injuries, etc., the defendant third-party plaintiff appeals from an order of the Supreme Court, Kings County (Knipel, J.), dated January 11, 2006, which denied its motion pursuant to CPLR 5015(a) to vacate a judgment of the same court dated July 9, 2004, on the basis that the judgment failed to award defense costs.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the appellant's motion to vacate a prior judgment of that court. The arguments advanced by the appellant did not constitute grounds for relief under either CPLR 5015(a) or pursuant to the Supreme Court's inherent discretionary power to exercise control over its own judgments (*see Matter of McKenna v County of Nassau, Off. of County Attorney*, 61 NY2d 739, 741; *Dyno v Lewis*, 300 AD2d 784, 785; *Matter*

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of Hempstead Classroom Teachers Assn v Hempstead Union Free School Dist., 272 AD2d 616). The appellant inexplicably failed to appeal from the judgment and from a prior order, dated September 4, 2003. Further, it neglected to avail itself of appropriate procedural vehicles, such as seeking leave to reargue (*see* CPLR 2221[d]).

MILLER, J.P., RIVERA, SKELOS and LUNN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court