

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

D13637
C/cb

_____AD3d_____

Submitted - December 20, 2006

STEPHEN G. CRANE, J.P.
WILLIAM F. MASTRO
FRED T. SANTUCCI
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO, JJ.

2006-08118

DECISION & ORDER

Erno Bodek, respondent, v David Appell, et al.,
defendants, Erasmo Taveras, appellant.

(Index No. 5032/05)

Litman & Jacobs, New York, N.Y. (Betty Jane Jacobs of counsel), for appellant.

Noel W. Hauser, New York, N.Y., for respondent.

In an action, inter alia, to recover damages for fraudulent misrepresentation, the defendant Erasmo Taveras appeals from an order of the Supreme Court, Kings County (Martin, J.), dated July 25, 2006, which granted that branch of the plaintiff's motion which was for reargument of the motion of the defendant Erasmo Taveras to vacate a judgment of the same court dated August 19, 2005, which, upon his default in answering, was in favor of the plaintiff and against him in the principal sum of \$300,000, which motion had been granted in an order of the same court dated June 9, 2006, and, upon reargument, in effect, vacated that portion of the order dated June 9, 2006, which granted the motion of the defendant Erasmo Taveras to vacate the judgment, and reinstated the judgment.

ORDERED that the order is affirmed, with costs.

In view of the circumstances of this case and the documentary evidence in the record, we conclude that the Supreme Court did not improvidently exercise its discretion in granting

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reargument and, upon reargument, vacating that portion of its prior order which had granted the appellant's motion to vacate the default judgment entered against him (*see generally Iorizzo v Mattikow*, 25 AD3d 762, 764; *TTF, Inc. v Brozman Archer Realty Servs.*, 282 AD2d 447).

CRANE, J.P., MASTRO, SANTUCCI, LIFSON and ANGIOLILLO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court