

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

D15425
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_____AD3d_____

Submitted - April 18, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
ROBERT A. LIFSON
THOMAS A. DICKERSON, JJ.

2007-00668

DECISION & ORDER

Vincent Cruz, appellant, v Masada Auto Sales,
Ltd., et al., respondents.

(Index No. 14925/03)

Sadis & Goldberg, LLP, New York, N.Y. (Francis Bigelow and David M. Kasell of
counsel), for appellant.

Murray Honig, Great Neck, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of warranty and violation of
General Business Law § 198-b, the plaintiff appeals, as limited by his brief, from so much of an order
of the Supreme Court, Queens County (Schulman, J.), entered December 21, 2006, as granted that
branch of the defendants' motion which was for leave to reargue their motion to deem them in
compliance with a discovery order dated October 18, 2005, which motion was determined in an order
of the same court dated June 26, 2006, and, upon reargument, vacated the order dated June 26, 2006,
and granted that branch of the defendants' motion which was to deem them in compliance with the
discovery order.

ORDERED that the order entered December 21, 2006, is affirmed insofar as appealed
from, with costs.

A motion for leave to reargue "shall be based on matters of fact or law allegedly
overlooked or misapprehended by the court in determining the prior motion, but shall not include

June 5, 2007

Page 1.

CRUZ v MASADA AUTO SALES, LTD.

matters of fact not offered on the prior motion” (CPLR 2221[d][2]; *see Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434, 435-436).

Contrary to the plaintiff’s contention, however, the defendants’ motion for leave to reargue was not improperly based upon new arguments not previously advanced. Moreover, upon reargument, the Supreme Court properly vacated the order dated June 26, 2006, and properly granted that branch of the defendants’ motion which was to deem them in compliance with the discovery order dated October 18, 2005.

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court