

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

D15429
W/gts

_____AD3d_____

Argued - May 1, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ANITA R. FLORIO, JJ.

2006-05789

DECISION & ORDER

Pawel Czernicki, appellant, v
Marek Lawniczak, respondent.

(Index No. 30079/95)

Pawel Czernicki, Brooklyn, N.Y., appellant pro se.

Mark L. Cortegiano, Middle Village, N.Y., for respondent.

In an action pursuant to RPAPL article 9 for the partition of real property, the plaintiff appeals, as limited by his brief, from stated portions of an order of the Supreme Court, Kings County (M. Garson, J.), dated October 18, 2004, which, inter alia, denied that branch of his cross motion pursuant to CPLR 5015(a)(3) which was to vacate an order of the same court (Alfano, J.H.O.) dated September 11, 2000, granting the defendant's motion to vacate a judgment of the same court (Belen, J.) entered November 20, 1998, which, upon the defendant's default in answering the complaint or appearing in the action, was in favor of the plaintiff and against the defendant, directing the removal the defendant's name from the deed to the real property.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff unreasonably delayed making his cross motion pursuant to CPLR 5015(a)(3) to vacate the order dated September 11, 2000, granting the defendant's motion to vacate a default judgment (*see Aames Capital Corp. v Davidsohn*, 24 AD3d 474, 475; *Green Point Sav. Bank v Arnold*, 260 AD2d 543, 544). Furthermore, the plaintiff failed to establish that the defendant procured the vacatur of the default judgment by fraud, misrepresentation, or other misconduct (*see*

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CPLR 5015[a][3]; *Citicorp Vendor Fin. Inc. v Island Garden Basketball, Inc.*, 27 AD3d 608, 609). Accordingly, the Supreme Court providently exercised its discretion in denying the plaintiff's cross motion.

The plaintiff's remaining contentions are without merit.

MILLER, J.P., RITTER, SANTUCCI and FLORIO, 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