

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

D16078
G/gts

_____AD3d_____

Submitted - May 30, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-09024

DECISION & ORDER

Steeve Desormeau, appellant, v Metropolitan Transit
Long Island Bus, et al., defendants third-party
plaintiffs-respondents; Joseph Laurenti, et al., third-party
defendants-respondents.

(Index No. 17311/03)

Harmon, Linder & Rogowsky, New York, N.Y. (Mitchell Dranow of counsel), for
appellant.

Sciretta & Venterina, LLP, Staten Island, N.Y. (Marilyn Venterina of counsel), for
defendants third-party plaintiffs-respondents.

Bryan M. Rothenberg, Hicksville, N.Y. (Fiedelman & McGaw [James K. O'Sullivan]
of counsel), for third-party defendants-respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Jonas, J.), dated August 16, 2006, which denied his
motion to vacate the dismissal of the action based on his failure to timely file a note of issue, and to
restore the action.

ORDERED that the order is affirmed, with costs.

This action was dismissed upon the plaintiff's failure to comply with a certification
order which constituted a valid 90-day notice pursuant to CPLR 3216 (*see* CPLR 3216; *Berktas v*

August 21, 2007

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McMillian, 40 AD3d 563; *Giannoccoli v One Cent. Park W. Assoc.*, 15 AD3d 348). To restore this action, the plaintiff was required to demonstrate a justifiable excuse for his failure to properly respond to the 90-day notice and a meritorious claim (see CPLR 3216[e]; *Baczkowski v Collins Constr. Co.*, 89 NY2d 499, 503; *Chaudhry v Ziomek*, 21 AD3d 922, 924). The plaintiff did not make that showing, since he failed to demonstrate a reasonable excuse for neglecting to comply with the certification order and a follow-up letter from the court, and he failed to adequately explain the approximately three-year gap in the treatment of his continuing symptoms (see *Berkas v McMillian*, *supra*; *Osgood v Martes*, 39 AD3d 516; *Serby v Long Is. Jewish Med. Ctr.*, 34 AD3d 441; *Li v Woo Sung Yun*, 27 AD3d 624; *Neugebauer v Gill*, 19 AD3d 567, 567-568). Accordingly, the Supreme Court properly denied the plaintiff's motion.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court