

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

D17497
Y/kmg

_____AD3d_____

Argued - December 3, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2006-11507

DECISION & ORDER

Education Resources Institute, Inc., appellant,
v Michelle Hughes, respondent.

(Index No. 29306-05)

Panteris & Panteris, LLP, Whitestone, N.Y. (George Panteris of counsel), for appellant.

Michelle Hughes, Lindenhurst, N.Y., respondent pro se.

In an action, inter alia, to recover on a promissory note, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Burke, J.), dated October 25, 2006, as denied that branch of its motion which was to vacate so much of a prior order of the same court dated June 1, 2006, as granted the defendant's cross motion to dismiss the complaint pursuant to CPLR 3211(a)(5), upon its default in responding to that motion.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

To be entitled to vacatur of the order entered upon its default, the plaintiff was required to make a showing, by way of admissible proof, inter alia, that it had a meritorious cause of action and that the action was not barred by the statute of limitations (*see e.g. White v Incorporated Village of Hempstead*, 41 AD3d 709, 710; *Education Resources Inst., Inc., v Piazza*, 17 AD3d 513, 514-515). However, the proof the plaintiff offered in support thereof, two conclusory affidavits by Warren Moore and computer printouts purporting to be the plaintiff's records, was inadmissible (*see CPLR 4518[a]*; *cf. People v Cratsley*, 86 NY2d 81, 89; *Federal Express Corporation v Federal*

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Jeans, Inc., 14 AD3d 424, 424-425; *Matter of Thomma*, 232 AD2d 422). Since the plaintiff failed to offer the required proof in admissible form, the Supreme Court did not err in denying that branch of its motion which was to vacate so much of the prior order dated June 1, 2006, as granted the defendant's cross motion to dismiss the complaint.

In light of this determination, we need not reach the parties' remaining contentions.

CRANE, J.P., RIVERA, FLORIO and BALKIN, 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