

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

D19226
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_____AD3d_____

Submitted - April 9, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-11324

DECISION & ORDER

Franchise Acquisitions Group Corp., appellant,
v Jefferson Valley Mall Limited Partnership,
respondent.

(Index No. 570/06)

Neal Brickman, New York, N.Y. (Ethan Leonard of counsel), for appellant.

Stein, McGuire, Pantages & Gigl, LLP, New York, N.Y. (Gerald J. Gunning of counsel), for respondent.

In an action, inter alia, for a judgment declaring the rights of the parties under a commercial lease, the plaintiff appeals from an order of the Supreme Court, Westchester County (Rudolph, J.), entered November 5, 2007, which granted the defendant's motion pursuant to 22 NYCRR 202.27 to dismiss the complaint for the plaintiff's failure to appear at a scheduled pretrial conference.

ORDERED that the order is affirmed, with costs.

To avoid dismissal of the complaint pursuant to 22 NYCRR 202.27 for failure to appear at a pretrial conference, a plaintiff is required to demonstrate both a reasonable excuse for failing to appear at the conference and the existence of a meritorious cause of action (*see Kang v LaGuardia Hosp.*, 12 AD3d 347; *Precision Envelope Co. v Marcus & Co.*, 306 AD2d 263, 264; *Lopez v Imperial Delivery Serv.*, 282 AD2d 190, 197). Here, the plaintiff failed to establish a

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reasonable excuse for its failure to appear at the conference (*see Kang v LaGuardia Hosp.*, 12 AD3d at 348; *Precision Envelope Co. v Marcus & Co.*, 306 AD2d at 264).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, 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