

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

D20410
G/kmg

_____AD3d_____

Submitted - September 3, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-10158

DECISION & ORDER

William Santiago, respondent, v
Raphael Santana, et al., appellants.

(Index No. 15001/02)

Lifflander & Reich, LLP, New York, N.Y. (Kent B. Dolan and Roman E. Gitnik of counsel), for appellants.

Laub & Delaney, LLP, White Plains, N.Y. (Diane Welch Bando, Montgomery J. Delaney, and Alfred C. Laub of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Westchester County (Colabella, J.), entered October 17, 2007, which granted the plaintiff's motion, in effect, to vacate a judgment of the same court (Barone, J.), dated June 27, 2006, which, upon a prior order of the same court dated April 4, 2006, granting the defendants' motion to dismiss the complaint upon his default in proceeding with trial, dismissed the complaint.

ORDERED that the order entered October 17, 2007, is reversed, on the law, with costs, the judgment and the order dated April 4, 2006, are reinstated, and the motion is denied.

An action dismissed pursuant to 22 NYCRR 202.27(b) may be restored if the plaintiff demonstrates both a reasonable excuse for the default and a meritorious cause of action (*see* CPLR 5015[a][1]; *Psomatithis v Transoceanic Cable Ship Co., Inc.*, 39 AD3d 837, 838; *Watson v New York City Tr. Auth.*, 38 AD3d 532; *Zeltser v Sacerdote*, 24 AD3d 541, 542). Even if the plaintiff's former attorney was responsible for both the lengthy delay in proceeding with trial and the plaintiff's

September 23, 2008

Page 1.

SANTIAGO v SANTANA

failure to appear on the last three scheduled trial dates, where there is a pattern of default and neglect, the negligence of the attorney is properly imputed to the client (*see Dave Sandel, Inc. v Specialized Indus. Servs. Corp.*, 35 AD3d 790, 791; *Edwards v Feliz*, 28 AD3d 512; *MRI Enters. v Amanat*, 263 AD2d 530, 531). Thus, the plaintiff failed to demonstrate a reasonable excuse for his default. Furthermore, the plaintiff failed to submit any medical evidence demonstrating that he sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject motor vehicle accident (*see Louis v MTA Long Is. Bus Co.*, 44 AD3d 628; *Rezene v Williams*, 22 AD3d 656; *Uddin v Mirza*, 10 AD3d 722). Accordingly, the plaintiff's motion, in effect, to vacate the judgment dismissing the complaint should have been denied.

SPOLZINO, J.P., MILLER, DICKERSON and ENG, 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