

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

D20487  
C/kmg

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Submitted - September 3, 2008

PETER B. SKELOS, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2007-11366

DECISION & ORDER

Louis Caruso, respondent, v John Valentin,  
a/k/a Juan Valentin, et al., appellants.

(Index No. 14040/05)

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Paul L. Dashefsky, Smithtown, N.Y., for appellants.

Law Offices of John T. Patafio, P.C., Amityville, N.Y. (Russell Mauro of counsel),  
for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Pitts, J.), dated October 22, 2007, which denied their motion pursuant to CPLR 5015 and CPLR 317 to vacate a judgment of the same court entered June 22, 2006, in favor of the plaintiff and against them in the principal sum of \$135,415, upon their failure to appear or answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in denying that branch of the defendants' motion which was to vacate the judgment entered upon their failure to appear or answer pursuant to CPLR 5015 since they failed to present a reasonable excuse for their default or to demonstrate the existence of a meritorious defense (*see* CPLR 5015[a][1]; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141; *Taylor v Saal*, 4 AD3d 467; *Dominguez v Carioscia*, 1 AD3d 396; *Kaplinsky v Mazor*, 307 AD2d 916). Moreover, vacatur was not warranted

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under CPLR 317 since the defendants failed to demonstrate that they did not personally receive notice of the summons and complaint in time to defend the action (*see* CPLR 317; *Taieb v Hilton Hotels Corp.*, 60 NY2d 725; *Brockington v Brookfield Dev. Corp.*, 308 AD2d 498; *Samet v Bedford Flushing Holding Corp.*, 299 AD2d 404, 405).

SKELOS, J.P., RITTER, DILLON, CARNI 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