

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

D20993
W/prt

_____AD3d_____

Submitted - October 15, 2008

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

2008-00611

DECISION & ORDER

Dios Gutierrez, plaintiff, v Steven
Lincoln-Mercury, Inc., et al., respondents;
Eileen Gutierrez, etc., nonparty-appellant.

(Index No. 17180/86)

Jed R. Schlacter, New York, N.Y., for nonparty-appellant.

Dobis, Russell & Peterson, P.C., New York, N.Y. (James S. Dobis of counsel), for
respondent Ford Motor Co.

In an action, inter alia, to recover damages for injury to property, nonparty Eileen Gutierrez appeals from an order of the Supreme Court, Kings County (Balter, J.), dated August 15, 2007, which denied her motion pursuant to CPLR 1015(a) to substitute herself, in her capacity as administratrix of the estate of Dios Gutierrez, in the place and stead of the deceased plaintiff, and to restore the action to the active calendar.

ORDERED that the order is affirmed, with costs.

This action was marked “disposed of” on November 2, 1990, when neither the plaintiff nor his attorney appeared in court for a scheduled status conference. The plaintiff died more than 14 years later without having restored the action to the active calendar, and his daughter Eileen Gutierrez was appointed administratrix of his estate. In order to vacate the deceased plaintiff’s 1990 default in appearing at the status conference, the administratrix was required to demonstrate both a reasonable excuse for the default and the existence of a meritorious cause of action (*see* 22 NYCRR 202.27; *Perez v New York City Hous. Auth.*, 47 AD3d 505; *Brooks v Haidt*, 30 AD3d 365). In view

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of the administratrix's failure to come forward with any reasonable explanation for the inordinate 17-year delay in seeking to restore this action to the active calendar, the Supreme Court providently exercised its discretion in denying her motion.

SPOLZINO, J.P., SANTUCCI, 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