

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

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_____AD3d_____

Argued - November 18, 2008

ROBERT A. SPOLZINO, J.P.
EDWARD D. CARNI
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2007-10937

DECISION & ORDER

Sun Whan Lee, respondent, v “John Doe,” et al.,
appellants.

(Index No. 15329/05)

Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for appellants.

Kim & Cha, LLP, Flushing, N.Y. (Michael D. Robb of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Lane, J.), dated July 19, 2007, as granted that branch of the plaintiff’s motion which was for leave to renew her opposition to their prior motion for summary judgment dismissing the complaint, which had been granted in an order dated April 13, 2007, and, upon renewal, denied their motion for summary judgment.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the plaintiff’s motion which was for leave to renew is denied.

The plaintiff commenced this action to recover damages for personal injuries sustained by her when the bus in which she was riding allegedly stopped suddenly and she fell to the floor.

“In general, a motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination, and must set forth a reasonable justification for the failure to present such facts on the prior motion” (*Worrell v Parkway Estates, LLC*, 43 AD3d 436). A motion for leave to renew is not a second chance freely given to parties who

have not exercised due diligence in making their first factual presentation (*see Renna v Gullo*, 19 AD3d 472). In this case, the plaintiff failed to set forth a reasonable justification for the failure to present the “new facts” on the original motion. In addition, the “new facts” offered by the plaintiff consisted of nothing more than a characterization of the stop as “violent” (*see Urquhart v New York City Tr. Auth.*, 85 NY2d 828, 830). Accordingly, the Supreme Court should have denied that branch of the plaintiff’s motion which was for leave to renew her opposition to the defendants’ prior motion for summary judgment.

The plaintiff’s remaining contention is without merit.

SPOLZINO, J.P., CARNI, ENG 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