

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

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Submitted - January 21, 2009

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
JOSEPH COVELLO
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2008-03760

DECISION & ORDER

Rowland Gureje, appellant, v Jasmine Richardson,
et al., respondents.

(Index No. 30633/06)

Chidi A. Eze, Brooklyn, N.Y., for appellant.

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Held, J.), dated April 10, 2008, which granted the defendants' motion to vacate an order of the same court (Ruditzky, J.), dated February 2, 2007, granting the plaintiff's motion for leave to enter a judgment upon their default in appearing or answering and setting the matter down for an inquest on the issue of damages, to vacate an order of the same court (Morano, J.), dated March 20, 2007, made after the inquest on the issue of damages, directing an award of damages in the principal sum of \$50,000, and to vacate the bill of costs and disbursements entered on April 5, 2007.

ORDERED that the order is affirmed, with costs.

The summons and complaint in the instant action were served upon the defendants by the "affix and mail" method (*see* CPLR 308[4]). However, the record demonstrates that this service was ineffective since the plaintiff failed to exercise the requisite due diligence in first attempting to

serve the defendants pursuant to CPLR 308(1) or 308(2) (*see Moran v Harting*, 212 AD2d 517, 518; *Walker v Manning*, 209 AD2d 691, 692; *McNeely v Harrison*, 208 AD2d 909, 910). Accordingly, the Supreme Court properly granted the defendants' motion.

SPOLZINO, J.P., RITTER, COVELLO, McCARTHY and BELEN, 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