

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

D22271
C/hu

_____AD3d_____

Argued - January 23, 2009

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2008-00235

DECISION & ORDER

Christopher Pape, respondent, v Fabio D.
Daino, et al., appellants.

(Index No. 12585/06)

Campanelli & Associates, P.C., Mineola, N.Y. (Andrew J. Campanelli and David A. Antwork of counsel), for appellants.

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Theodore D. Sklar of counsel), for respondent.

In an action, inter alia, to enjoin the defendants from interfering with the plaintiff's use and enjoyment of an easement, the defendants appeal from an order of the Supreme Court, Suffolk County (Molia, J.), dated October 31, 2007, which denied that branch of their motion which was, in effect, to vacate a judgment of the same court entered March 27, 2007, which, upon a prior order of the same court entered November 16, 2006, granting the plaintiff's unopposed motion for summary judgment on the complaint and dismissing the defendants' counterclaim, is in favor of the plaintiff on the complaint and dismissed the counterclaim.

ORDERED that the order is affirmed, with costs.

On their motion, inter alia, in effect, to vacate the judgment pursuant to CPLR 5015(a), the defendants were required to demonstrate a reasonable excuse for their default in opposing the plaintiff's motion for summary judgment on the complaint and dismissing their counterclaim, as well as a meritorious defense to the plaintiff's complaint and a meritorious counterclaim (*see* CPLR 5015[a]; *Garkusha v Mutual of Omaha Ins. Co.*, 259 AD2d 466). As the

March 3, 2009

Page 1.

PAPE v DAINO

defendants failed to provide evidence of a meritorious defense or counterclaim, the Supreme Court properly denied the defendants' motion, regardless of the defendants' reasons for failing to oppose the plaintiff's motion for summary judgment on the complaint and dismissing the counterclaim (*see Cascio v Scigiano*, 262 AD2d 264).

MASTRO, J.P., COVELLO, DICKERSON 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