

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

D23699
T/prt

_____AD3d_____

Argued - April 20, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-03305

DECISION & ORDER

NYCTL 1999-1 Trust, appellant, et al., plaintiff, v
Surf Coney Island, Inc., et al., respondents.

(Index No. 16323/03)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Vincent D’Orazio,
Frances Henn, and Brooke Zacker of counsel), for appellant.

Barry S. Gedan, Riverdale, N.Y., for respondent Surf Coney Island, Inc.

In an action to foreclose a tax lien, the plaintiff NYCTL 1999-1 Trust appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated February 20, 2008, which denied those branches of the plaintiffs’ motion which were for leave to renew and reargue the plaintiffs’ prior motion for summary judgment on the complaint, which had been denied in an order dated July 25, 2007, and the prior cross motion of the defendants Surf Coney Island, Inc., and Kansas Fried Chicken, Inc., for summary judgment dismissing the complaint which had been granted in the order dated July 25, 2007.

ORDERED that the appeal from so much of the order as denied that branch of the plaintiffs’ motion which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondent Surf Coney Island, Inc.

The Supreme Court providently exercised its discretion in denying that branch of the

June 23, 2009

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plaintiffs' motion which was for leave to renew. The plaintiffs failed to present a reasonable justification for their failure to present certain "new facts" on the original motion and cross motion (CPLR 2221[e][3]; *see O'Connell v Post*, 27 AD3d 631; *Renna v Gullo*, 19 AD3d 472). In any event, those facts would not have changed the prior determinations (*see* CPLR 2221[e][2]; *Renna v Gullo*, 19 AD3d at 472).

FISHER, J.P., COVELLO, ANGIOLILLO 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