

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

D23947  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 4, 2009

ROBERT A. SPOLZINO, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

---

2008-02753

DECISION & ORDER

Frank Carullo, appellant, v Pistilli Construction  
and Development Corp., respondent.

(Index No. 7551/04)

---

Jonathan Silver, Kew Gardens, N.Y., for appellant.

Coritsidis & Lambros, PLLC, New York, N.Y. (Jeffrey A. Gangemi of counsel), for  
respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Queens County (Elliot, J.), dated February 6, 2008, which denied his motion for leave to renew his prior motion for summary judgment dismissing the defendant's second affirmative defense and his opposition to the defendant's prior cross motion to dismiss the complaint pursuant to CPLR 3211(a)(5) and (7), which had been determined in an order dated June 8, 2005.

ORDERED that the order dated February 6, 2008, is affirmed, with costs.

A motion for leave to renew must be based upon new or additional facts "not offered on the prior motion that would change the prior determination" (CPLR 2221[e][2]), and "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]; see *O'Connell v Post*, 27 AD3d 631; see also *O'Dell v Caswell*, 12 AD3d 492; *Rizzotto v Allstate Ins. Co.*, 300 AD2d 562; *Williams v Fitzsimmons*, 295 AD2d 342). The plaintiff's motion

July 14, 2009

Page 1.

CARULLO v PISTILLI CONSTRUCTION AND DEVELOPMENT CORP.

for leave to renew was properly denied since he failed to set forth a reasonable justification for his failure to present the alleged new facts on the prior motion (*see O'Connell v Post*, 27 AD3d at 631).

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court