

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

D24473
W/kmg

_____AD3d_____

Submitted - September 9, 2009

HOWARD MILLER, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2008-11678

DECISION & ORDER

Shimon C. Goldberg, plaintiff-respondent, v
Toby Goldberg, etc., defendant-respondent,
James W. Krueger, appellant.

(Index No. 15054/08)

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina of counsel), for
appellant.

Walter C. Silverstein, P.C., Brooklyn, N.Y. (Mitchell Dranow of counsel), for
plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant James W. Krueger
appeals from an order of the Supreme Court, Kings County (Balter, J.), dated November 26, 2008,
which denied his motion pursuant to CPLR 510(3) to change the venue of the action from Kings
County to Sullivan County.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the appellant's
motion pursuant to CPLR 510(3) to change the venue of this action from Kings County to Sullivan
County based on the convenience of material witnesses (*see Frankel v Stavsky*, 40 AD3d 918, 919;
O'Brien v Vassar Bros. Hosp., 207 AD2d 169, 172). In support of his motion, the appellant failed
to sufficiently establish that the nonparty witnesses for whose convenience the change of venue was
sought were willing to testify on his behalf and would be inconvenienced if venue were not changed
(*see Walsh v Mystic Tank Lines Corp.*, 51 AD3d 908, 909; *Miszko v Leeds & Morelli*, 269 AD2d

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372; *Cumberbatch v Gatehouse Motel & Rest.*, 265 AD2d 370; *Rich v O'Connor*, 212 AD2d 767). Moreover, the appellant failed to specify the nature and materiality of their anticipated testimony (*see Shindler v Warf*, 24 AD3d 429, 430; *Giaino v Hastings*, 19 AD3d 365, 366; *Weisemann v Davison*, 162 AD2d 448).

MILLER, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court