

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

D24512
C/cb

_____AD3d_____

Submitted - September 9, 2009

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

2009-01529

DECISION & ORDER

Leslie Barnave, respondent, v United Ambulette,
Inc., et al., appellants.

(Index No. 21912/00)

Timothy M. Sullivan, New York, N.Y., for appellants.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated January 12, 2009, which granted the plaintiff's motion, in effect, to vacate the dismissal of the action pursuant to 22 NYCRR 202.27.

ORDERED that the order is reversed, on the law, the facts, and in the exercise of discretion, with costs, and the plaintiff's motion, in effect, to vacate the dismissal of the action pursuant to 22 NYCRR 202.27 is denied.

The action was dismissed when the plaintiff failed to appear at a duly scheduled compliance conference (*see* 22 NYCRR 202.27[b]). To be relieved of the default in appearing at the conference, the plaintiff was required to show both a reasonable excuse for the default and a meritorious cause of action (*see* CPLR 5015[a][1]; *Brownfield v Ferris*, 49 AD3d 790, 791; *Zeltser v Sacerdote*, 24 AD3d 541, 542; *Solomon v Ramlall*, 18 AD3d 461). The plaintiff failed to demonstrate a reasonable excuse for his failure to appear at the compliance conference and failed to submit any evidence of a meritorious cause of action (*see Brownfield v Ferris*, 49 AD3d at 791).

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Accordingly, the plaintiff's motion should have been denied.

RIVERA, J.P., MILLER, 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

October 6, 2009

BARNAVE v UNITED AMBULETTE, INC.