

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

D24588
H/prt

_____AD3d_____

Argued - September 15, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2008-09415

DECISION & ORDER

Zebulon C. Taintor, appellant, et al., plaintiff,
v Melinda Mary Taintor, respondent.

(Index No. 16956/04)

Richard A. Kraslow, P.C., Melville, N.Y., for appellant.

Bracken & Margolin, LLP, Islandia, N.Y. (Linda U. Margolin of counsel), for
respondent.

In an action, inter alia, to recover damages for fraud, the plaintiff Zebulon C. Taintor appeals from an order of the Supreme Court, Suffolk County (Weber, J.), dated September 22, 2008, as amended by an order of the same court dated October 6, 2008, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order, as amended, is affirmed, with costs.

The defendant made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the instant action is barred by the doctrines of res judicata and collateral estoppel based upon this Court's decision on a prior appeal (*see Taintor v Taintor*, 50 AD3d 887; *see also Buechel v Bain*, 97 NY2d 295; *Smith v Russell Sage Coll.*, 54 NY2d 185, 194; *Board of Mgrs. of Pomona Park Condominiums v Gennis*, 61 AD3d 905, 907; *Montalbano Condon & Frank, P.C. v Rodi*, 54 AD3d 1012, 1013; *Sosa v JP Morgan Chase Bank*, 33 AD3d 609, 610-611). In opposition to the motion, the appellant failed to raise a triable issue of fact (*see Board of Mgrs. of Pomona Park Condominiums v Gennis*, 61 AD3d 905, 907; *Harley v Adler*, 7 AD3d 570, 571; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

October 13, 2009

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The appellant's remaining contentions are without merit.

RIVERA, J.P., FLORIO, MILLER and AUSTIN, JJ., concur.

2008-09415

DECISION & ORDER ON MOTION

Zebulon C. Taintor, appellant, et al., plaintiff,
v Melinda Mary Taintor, respondent.

(Index No. 16956/04)

Motion by the respondent pursuant to 22 NYCRR 130-1.1 for an award of an attorney's fee and costs against the appellant on an appeal from an order of the Supreme Court, Suffolk County, dated September 22, 2008, as amended October 6, 2008. By decision and order on motion of this Court dated June 2, 2009, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied.

RIVERA, J.P., FLORIO, MILLER and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court