

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

D24706  
G/kmg

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

Submitted - September 9, 2009

PETER B. SKELOS, J.P.  
JOSEPH COVELLO  
FRED T. SANTUCCI  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

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2009-05648

DECISION & ORDER

Jesse Baldwin, appellant, v Cristino Mateogarcia,  
et al., respondents, et al., defendant  
(and a related action).

(Index No. 7201/07)

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Harry I. Katz, P.C. (Shayne, Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y.  
[Jonathan A. Dachs], of counsel), for appellant.

Weiner Millo & Morgan, LLC, New York, N.Y. (Amy L. Pludwin of counsel), for  
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (McCarty, J.), entered June 1, 2009, as granted that branch of the motion of the defendants Cristino Mateogarcia and Superior Laundry Services, LLC, which was for leave to renew their opposition to the plaintiff's prior motion for leave to enter a default judgment against them, which had been granted in a decision and order of this Court dated December 9, 2008 (*see Baldwin v Mateogarcia*, 57 AD3d 594), and, upon renewal, denied his motion.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the respondents' motion for leave to renew is denied.

A motion for leave to renew must be "based upon new facts not offered on the prior motion that would change the prior determination," and the movant must state a "reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e]; *see Yarde v*

October 20, 2009

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BALDWIN v MATEOGARCIA

*New York City Tr. Auth.*, 4 AD3d 352; *Riccio v Deperalta*, 274 AD2d 384). In this case, which arises out of an automobile accident, the respondents' newly discovered evidence consisted of an affidavit of the defendant driver, Cristino Mateogarcia, who allegedly could not be located sooner. However, Mateogarcia's purported unavailability cannot serve as a "reasonable justification" for the respondents' failure to present an affidavit of merit at the time the plaintiff originally moved for leave to enter a default judgment against them in light of the respondents' lack of due diligence in obtaining the affidavit. Accordingly, the Supreme Court should not have granted leave to renew.

SKELOS, J.P., COVELLO, SANTUCCI, CHAMBERS and AUSTIN, 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