

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

D25084  
H/kmg

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

Argued - October 8, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

---

2008-08986

DECISION & ORDER

Pinkhas Abayev, etc., appellant-respondent,  
v Syed Zia, et al., defendants, Karen Mazuer,  
respondent-appellant.

(Index No. 5229/06)

---

Sipsas & Nazrisho, P.C., Astoria, N.Y. (Russ M. Nazrisho of counsel), for appellant-respondent.

Petrocelli & Christy, New York, N.Y. (Richard N. Petrocelli and Michael Zentner of counsel), for respondent-appellant.

In an action to recover damages for personal injuries and wrongful death, the plaintiff appeals from so much of an order of the Supreme Court, Queens County (Taylor, J.), dated August 15, 2008, as, upon renewal, adhered to its original determination in an order dated April 15, 2008, granting the motion of the defendant Karen Mazuer for summary judgment dismissing the complaint insofar as asserted against her, and the defendant Karen Mazuer cross-appeals from so much of the same order as granted that branch of the plaintiff's motion which was for leave to renew the opposition to her prior motion for summary judgment.

ORDERED that the order dated August 15, 2008, is affirmed, without costs or disbursements.

A motion for leave to renew "shall be based upon new 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 Ramirez v Khan*, 60 AD3d 748; *Dinten-Quiros v Brown*, 49 AD3d 588; *Madison v Tahir*, 45 AD3d 744).

November 17, 2009

Page 1.

ABAYEV v ZIA

“Although a motion for leave to renew generally must be based on newly-discovered facts, this requirement is a flexible one, and a court has the discretion to grant renewal upon facts known to the movant at the time of the original motion, provided that the movant offers a reasonable justification for the failure to submit the additional facts on the original motion” (*Matter of Allstate Ins. Co. v. Liberty Mut. Ins.*, 58 AD3d 727, 728).

Here, the Supreme Court providently exercised its discretion in granting the plaintiff leave to renew his opposition to the motion of the defendant Karen Mazuer for summary judgment dismissing the complaint insofar as asserted against her. The plaintiff submitted additional evidence and offered a reasonable justification for his failure to submit that additional evidence at the time of his opposition to the motion for summary judgment (*see* CPLR 2221[e]). However, upon renewal, the Supreme Court properly adhered to its original determination granting the motion for summary judgment.

SKELOS, J.P., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court