

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

D25112
Y/prt

_____AD3d_____

Argued - September 18, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-09135

DECISION & ORDER

Michael Samet, as executor of the estate of Andrew Samet, appellant, v Isaac I. Binson, respondent.

(Index No. 15032/98)

Foreht Last Landau & Katz, LLP, New York, N.Y. (Richard S. Last of counsel), for appellant.

Sheldon H. Gopstein, New York, N.Y., for respondent.

In an action to recover money owed, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Bunyan, J.), dated September 19, 2008, as denied that branch of his motion which was for leave to renew his prior motion to reject a referee's report of the same court (Archer, Ct. Atty. Ref.), dated March 27, 2007, determining that service of process was not properly effected upon the defendant, which motion had been denied in an order dated September 10, 2007.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the plaintiff's motion which was for leave to renew his prior motion to reject a referee's report because the plaintiff failed to provide a reasonable justification for his failure to present the new facts on his original motion (*see* CPLR 2221[e][3]; *Elder v Elder*, 21 AD3d 1055; *Morrison v Rosenberg*, 278 AD2d 392).

November 24, 2009

SAMET, as executor of estate of SAMET v BINSON

Page 1.

In light of our determination, we need not reach the parties' remaining contentions.

MASTRO, J.P., BALKIN, DICKERSON and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court