

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

D25227
O/nl

_____AD3d_____

Argued - November 5, 2009

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-00714

DECISION & ORDER

Pennsylvania Higher Education Assistance Agency,
respondent, v Alexander N. Musheyev, appellant.

(Index No. 27544/05)

David J. Gold, P.C., New York, N.Y., for appellant.

Friesner & Salzman, Great Neck, N.Y. (Nadia Youkelsone of counsel), for
respondent.

In an action to recover on a promissory note, the defendant appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), dated January 8, 2009, which, inter alia, granted the plaintiff's motion for summary judgment on the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint. The plaintiff established its prima facie entitlement to judgment as a matter of law by submitting proof of the existence of the promissory note executed by the defendant and the defendant's default in making payments pursuant to that note (*see Verela v Citrus Lake Dev., Inc.*, 53 AD3d 574, 575; *Levien v Allen*, 52 AD3d 578; *Anand v Wilson*, 32 AD3d 808). In opposition, the defendant failed to raise a triable issue of fact with respect to a bona fide defense (*see Quest Commercial, LLC v Rovner*, 35 AD3d 576; *Famolaro v Crest Offset, Inc.*, 24 AD3d 604; *Bank of N.Y. v Vega Tech. USA, LLC*, 18 AD3d 678). Contrary to the defendant's contention, his claim that the 2005 agreement resolving then-ongoing litigation amended the terms of the promissory note is

not supported by the evidence (*see Raico v Concorde Funding Group*, 60 AD3d 834, 836).

The defendant's remaining contention is without merit.

MASTRO, J.P., BELEN, HALL and AUSTIN, 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