

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

D25275  
G/prt

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

Submitted - October 28, 2009

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2008-05181  
2008-05183

DECISION & ORDER

Najim H. Chechen, appellant, v  
Kevin Spencer, respondent.

(Index No. 4408/07)

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Sussman & Watkins, Goshen, N.Y. (Michael H. Sussman of counsel), for appellant.

In an action to recover damages for trespass and nuisance, the plaintiff appeals from (1) an order of the Supreme Court, Orange County (Owen, J.), dated February 8, 2008, which denied his motion, in effect, to vacate the dismissal of the action pursuant to 22 NYCRR 202.27 and to restore the action to the calendar, and (2) an order of the same court dated April 30, 2008, which denied his motion for leave to renew his prior motion.

ORDERED that the orders are affirmed, without costs or disbursements.

After the plaintiff failed to appear at a scheduled status conference on November 7, 2007, the court scheduled another status conference to be held on December 11, 2007. The action was dismissed when the plaintiff failed to appear at the December 11, 2007, status conference (*see* 22 NYCRR 202.27[b]). To be relieved of the default in appearing at that conference, the plaintiff was required to show both a reasonable excuse for the default and the existence of a meritorious cause of action (*see* CPLR 5015[a][1]; *Barnave v United Ambulette, Inc.*, 66 AD3d 620; *Brownfield v Ferris*, 49 AD3d 790, 791; *Zeltser v Sacerdote*, 24 AD3d 541, 542). The plaintiff's counsel's excuse of law office failure was vague and unsubstantiated and, thus, did not constitute a reasonable excuse for the default (*see Murray v New York City Health & Hosps. Corp.*, 52 AD3d 792, 793; *cf.*

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*St. Luke's Roosevelt Hosp. v Blue Ridge Ins. Co.*, 21 AD3d 946, 947). Moreover, the plaintiff failed to demonstrate the existence of a meritorious cause of action. Accordingly, the Supreme Court properly denied the plaintiff's motion to vacate the dismissal of the action (see *Brownfield v Ferris*, 49 AD3d at 791).

The Supreme Court properly denied the plaintiff's motion for leave to renew. The plaintiff failed to provide a reasonable justification for the failure to present the new facts in support of the original motion (see CPLR 2221[e]; cf. *Brown Bark I, L.P. v Imperial Dev. & Constr. Corp.*, 65 AD3d 510, 512; *Reshevsky v United Water N.Y., Inc.*, 46 AD3d 532, 533; *Financial Pac. Leasing, LLC v D & D Wire, Inc.*, 44 AD3d 706, 707).

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court