

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

D26111
Y/prt

_____AD3d_____

Submitted - December 2, 2009

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

2009-01812

DECISION & ORDER

Errol R. Alexander, et al., appellants, v New York City Transit Authority, defendant third-party plaintiff-respondent; L.A. Wenger Contracting Co., Inc., third-party defendant-respondent (and a fourth-party action).

(Index No. 13180/00)

Robert Wanker, Brooklyn, N.Y., for appellants.

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Velasquez, J.), dated January 21, 2009, which denied their motion, in effect, pursuant to CPLR 5015(a)(1) to vacate so much of a judgment of the same court (Knipel, J.) entered July 9, 2004, as, upon an order of the same court dated September 4, 2003, granting the separate unopposed motions of the defendant third-party plaintiff and the third-party defendant, inter alia, pursuant to CPLR 3126 to dismiss the complaint, dismissed the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiffs' attorney was served with a default judgment with notice of entry on September 3, 2004. Since the plaintiffs did not make their present motion, in effect, pursuant to CPLR 5015(a)(1) to vacate so much of the default judgment as dismissed the complaint until more

February 16, 2010

Page 1.

ALEXANDER v NEW YORK CITY TRANSIT AUTHORITY

than four years after the default judgment was served upon their attorney, the motion was properly denied as untimely (*see* CPLR 5015[a][1]; *Terlizzese v Robinson's Custom Serv., Inc.*, 25 AD3d 547, 548; *cf. Hartcorn v Hartcorn*, 299 AD2d 395; *Kachar v Berlin*, 296 AD2d 479; *Nahmani v Town of Ramapo*, 262 AD2d 291).

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