

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

D26862
C/prt

_____AD3d_____

Submitted - March 24, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-07396

DECISION & ORDER

Antoinette Donovan, appellant, v
Nick Chiapetta, etc., respondent.

(Index No. 15871/06)

Annette G. Hasapidis, South Salem, N.Y., for appellant.

Harter Secrest & Emery LLP, Rochester, N.Y. (Richard E. Alexander of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Balter, J.), dated June 10, 2009, which denied her motion to vacate an order of the same court dated December 4, 2008, granting the defendant's unopposed motion to dismiss the complaint for failure to comply with certain discovery demands.

ORDERED that the order dated June 10, 2009, is affirmed, with costs.

In order to vacate her default in opposing the defendant's prior motion to dismiss the complaint, a plaintiff is generally required to demonstrate both a reasonable excuse for her default and a meritorious cause of action (*see Hospital for Joint Diseases v Dollar Rent A Car*, 25 AD3d 534; *Fekete v Camp Skwere*, 16 AD3d 544, 545; *Amato v Fast Repair, Inc.*, 15 AD3d 429, 430; *Costanza v Gold*, 12 AD3d 551, 552). The determination of what constitutes a reasonable excuse lies within the court's discretion (*see Santiago v New York City Health & Hosps. Corp.*, 10 AD3d 393, 394; *Roussodimou v Zafiriadis*, 238 AD2d 568, 569; *Grutman v Southgate at Bar Harbor Home Owners' Assn.*, 207 AD2d 526, 527). The plaintiff failed to adequately explain her failure to oppose the

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defendant's prior motion to dismiss the complaint, and the conclusory statements in the affidavit of her medical expert were insufficient to demonstrate the existence of a meritorious cause of action.

MASTRO, J.P., SANTUCCI, DICKERSON, BELEN 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