

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

D27019  
W/prt

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

Argued - March 18, 2010

WILLIAM F. MASTRO, J.P.  
RUTH C. BALKIN  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

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2009-07229

DECISION & ORDER

Raymond Tartaglione, etc., appellant, v Kuder  
Island Colony, Inc., et al., respondents.

(Index No. 9752/07)

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Gaines, Gruner, Ponzini & Novick, LLP, White Plains, N.Y. (Steven H. Gaines of counsel), for appellant.

Goldenberg & Selker, LLP, White Plains, N.Y. (Ira S. Goldenberg and Diane E. Selker of counsel), for respondents.

In a shareholders' derivative action, inter alia, to recover damages for breach of fiduciary duty, the plaintiff appeals from an order of the Supreme Court, Westchester County (O. Bellantoni, J.), entered June 2, 2009, which denied his motion for leave to renew his opposition to the defendants' cross motion, inter alia, for summary judgment dismissing the complaint, which had been determined in an order entered January 16, 2008.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the plaintiff's motion for leave to renew his opposition to the defendants' cross motion, inter alia, for summary judgment dismissing the complaint, since the new evidence he submitted would not have warranted denial of the cross motion (*see* CPLR 2221[e]; *Khan v Nelson*, 68 AD3d 1062).

MASTRO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

April 20, 2010

TARTAGLIONE v KUDER ISLAND COLONY, INC.