

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

D27238
C/kmg

_____AD3d_____

Submitted - April 21, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-10893

DECISION & ORDER

Ramona Valentin, respondent, v City of New York,
defendant, Steven Barreto, appellant.

(Index No. 27578/07)

Martyn Toher & Martyn (Mauro Goldberg & Lilling LLP, Great Neck, N.Y. [Caryn L. Lilling, Matthew W. Naparty, and Richard J. Montes], of counsel), for appellant.

Edelman & Edelman, P.C., New York, N.Y. (Noreen M. Giusti and David M. Schuller of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Steven Barreto appeals from an order of the Supreme Court, Kings County (Miller, J.), dated October 7, 2009, which denied his motion pursuant to CPLR 5015(a) to vacate an order of the same court dated April 16, 2008, granting the plaintiff's unopposed motion for leave to enter judgment against him upon his failure to appear or answer.

ORDERED that the order is affirmed, with costs.

The appellant's motion pursuant to CPLR 5015(a)(1) to vacate an order dated April 16, 2008, granting the plaintiff's unopposed motion for leave to enter judgment against him was properly denied, as it was not made within one year after service of a copy of the order with notice of entry (*see Matter of Putnam County Natl Bank v JP Morgan Chase Bank N.A.*, 57 AD3d 677, 678; *Malik v Noe*, 54 AD3d 733, 734; *Levine v Berlin*, 46 AD2d 902). Furthermore, the Supreme Court providently exercised its discretion in not extending the time period, since the appellant failed to demonstrate a reasonable excuse for his delay in moving to vacate the order (*see Hosten v*

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Oladapo, 44 AD3d 1006, 1007; *Katz v Perl*, 22 AD3d 806, 807), and failed to demonstrate a reasonable excuse for his failure to answer the complaint (see CPLR 5015[a][1]; *Matter of Nieto*, 70 AD3d 831; *Dorrer v Berry*, 37 AD3d 519; *Awad v Severino*, 122 AD2d 242; *Passalacqua v Banat*, 103 AD2d 769).

FISHER, J.P., COVELLO, BALKIN, LEVENTHAL and LOTT, 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