

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

D29553
H/kmb

_____AD3d_____

Submitted - December 8, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2010-03845

DECISION & ORDER

Devern Mims, respondent, v
Fausto Perez, appellant.

(Index No. 42202/07)

The Bhatta Law Group, P.C., New York, N.Y. (Mark Du of counsel), for appellant.

Gordon & Gordon, P.C., Forest Hills, N.Y. (Peter S. Gordon of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Spodek, J.), dated April 7, 2010, which denied his motion pursuant to CPLR 5015(a)(1) and (3) to vacate a judgment of the same court dated October 27, 2009, which, upon his default in answering the complaint and after an inquest on damages, was in favor of the plaintiff and against him in the principal sum of \$100,000.

ORDERED that the order is affirmed, with costs.

The defendant failed to meet his burden of establishing the existence of fraud, misrepresentation, or other misconduct on the part of the plaintiff and, therefore, was not entitled to vacatur of the judgment entered upon his default in answering the complaint pursuant to CPLR 5015(a)(3) (*see Sicurelli v Sicurelli*, 73 AD3d 735; *Scheu v Fan Ru Tseng*, 72 AD3d 930).

December 28, 2010

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The defendant's remaining contentions are without merit.

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court