

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

D29703
C/ct

_____AD3d_____

Argued - December 21, 2010

THOMAS A. DICKERSON, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2009-11553

DECISION & ORDER

Gary Prinz, appellant, v New York State Electric and Gas, et al., respondents.

(Index No. 1510/09)

Gerosa & Vanderwoude, Carmel, N.Y. (Neil Vanderwoude of counsel), for appellant.

Hinman, Howard & Kattell, LLP, Binghamton, N.Y. (Leslie Prechtl Guy of counsel), for respondents.

In an action to recover damages for fraud, breach of contract, and violation of due process, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated November 9, 2009, as denied those branches of his motion which were for leave to renew his opposition to the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the complaint, which was granted in an order of the same court dated August 19, 2009, and for leave to amend his complaint.

ORDERED that the order dated November 9, 2009, is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the plaintiff's motion which was for leave to renew his opposition to the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the complaint, which had been granted by the Supreme Court in an earlier order. "A motion for leave to renew must be 'based upon new facts not offered on the prior motion that would change the prior determination'" (*Jackson Hgts. Care Ctr., LLC v Bloch*, 39 AD3d 477, 480, quoting CPLR 2221[e][2]; *see Renna v Gullo*, 19 AD3d 472, 473; *Kaufman v Kunis*, 14 AD3d 542). Here, the allegedly new facts offered would not have changed the prior determination (*see* CPLR 2221[e][2];

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Countrywide Home Loans Servicing, LP v Albert, 78 AD3d 985).

Under the circumstances of this case, the Supreme Court also properly denied that branch of the plaintiff's motion which was for leave to amend his complaint (*see Kazakhstan Inv. Fund v Manolovici*, 2 AD3d 249, 250).

DICKERSON, J.P., HALL, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court