

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

D29915
H/kmb

_____AD3d_____

Submitted - January 19, 2011

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2009-07601

DECISION & ORDER

Hector Rodriguez, appellant, v David
Mitchell, etc., et al., respondents.

(Index No. 12331/92)

The Berkman Law Office, LLC, Brooklyn, N.Y. (Daniel Shimko of counsel), for
appellant.

James J. Toomey, New York, N.Y. (Evy L. Kazansky of counsel), for respondents.

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 his motion
to restore the action to active status and granted the defendants' cross motion to dismiss the
complaint.

ORDERED that the order is affirmed, with costs.

On September 16, 1998, the Supreme Court marked this case "inactive pre-note" after
the plaintiff failed to appear at a status conference. The plaintiff's motion to restore the action to
active status was made over 10 years after the case was marked inactive and almost 18 years after
the accident. In light of the inexcusable delay of over 10 years in moving to restore this action to
active status and the resulting prejudice to the defendants caused by the delay, the plaintiff's motion
was properly denied pursuant to the doctrine of laches (*see Pickett v Federated Dept. Stores, Inc.*,
79 AD3d 1116; *Rosenstrauss v Women's Imaging Ctr. of Orange County*, 56 AD3d 454; *Lewis v*
New York City Tr. Auth., 38 AD3d 201).

February 1, 2011

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For the same reasons, the Supreme Court properly granted the defendants' cross motion pursuant to 22 NYCRR 202.27 to dismiss the complaint (*see Feldstein v New York State Dept. of Correctional Servs.*, 55 AD3d 663; *First Nationwide Bank v Calano*, 223 AD2d 524, 525).

SKELOS, J.P., COVELLO, ENG, CHAMBERS and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court