

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

D30634  
C/kmb

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Submitted - March 7, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

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2009-06120

DECISION & ORDER

Malka Yerushalmi, respondent,  
v Joseph Yerushalmi, appellant.

(Index No. 201267/02)

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Jonathan E. Edwards, Freeport, N.Y. (Arnold Davis of counsel), for appellant.

Schlissel Ostrow Karabatos, PLLC, Garden City, N.Y. (Elena Karabatos, Neil S. Cohen, and Lisa R. Schoenfeld of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Nassau County (Spinola, J.), dated May 28, 2009, which denied his motion, in effect, for leave to renew his prior motion to modify an order of the same court dated March 15, 2004, which, inter alia, awarded pendente lite relief to the plaintiff, which motion was denied by order of the same court (Diamond, J.), dated August 13, 2007.

ORDERED that the order dated May 28, 2009, is affirmed, with costs.

“A motion for leave to renew must (1) be based upon new facts not offered on a prior motion that would change the prior determination, and (2) set forth a reasonable justification for the failure to present such facts on the prior motion” (*Swedish v Beizer*, 51 AD3d 1008, 1010; quoting *Ellner v Schwed*, 48 AD3d 739, 740; see CPLR 2221[e]; *Matter of 171 Sterling, LLC v Stone Arts, Inc.*, 66 AD3d 688). “Leave to renew is not warranted where the factual material adduced in connection with the subsequent motion is merely cumulative with respect to the factual material submitted in connection with the original motion” (*Matter of Orange & Rockland Util. v Assessor of Town of Haverstraw*, 304 AD2d 668, 669, quoting *Stone v Bridgehampton Race Circuit*, 244

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AD2d 403, 403; *see City of New York v St. Paul Fire & Mar. Ins. Co.*, 21 AD3d 982).

Here, the defendant's motion, in effect, for leave to renew was not based upon new facts in existence at the time of the original motion which would have changed the prior determination, but consisted of factual material that was merely cumulative with respect to the factual material submitted in connection with the prior motion. Accordingly, the motion, in effect, for leave to renew was properly denied.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court