

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

D30734  
Y/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 25, 2011

WILLIAM F. MASTRO, J.P.  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2009-02522

DECISION & ORDER

Louis P. Welz, appellant, v Judy Welz,  
respondent.

(Index No. 10532/04)

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Kleinman & Sheldo Attorneys at Law, P.C., Flushing, N.Y. (Leah Z. Sheldo of  
counsel), for appellant.

Mazur & Bocketti, New York, N.Y. (Wayne J. Mazur of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment dated January 2, 2007, as resettled November 20, 2007, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Ambrosio, J.), dated February 9, 2009, as denied those branches of his motion which were, in effect, pursuant to CPLR 5015(a)(2) and (a)(3) to vacate a prior order of the same court dated September 22, 2008.

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

The Supreme Court properly denied that branch of the plaintiff's motion which was, in effect, pursuant to CPLR 5015(a)(2) to vacate its order dated September 22, 2008. The plaintiff failed to establish that the allegedly newly-discovered evidence he submitted in support of his motion probably would have produced a different result (*see Sicurelli v Sicurelli*, 73 AD3d 735; *Jonas v Jonas*, 4 AD3d 336). Likewise, because the plaintiff failed to satisfy his burden of establishing the existence of fraud, misrepresentation, or misconduct on the part of the defendant, the Supreme Court

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properly denied that branch of his motion which, in effect, sought vacatur pursuant to CPLR 5015(a)(3) (*see Sicurelli v Sicurelli*, 73 AD3d at 735; *Badgett v Badgett*, 2 AD3d 379).

MASTRO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:   
Matthew G. Kiernan  
Clerk of the Court