

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

D32297
C/prt

_____AD3d_____

Submitted - September 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-04749

DECISION & ORDER

John Davies, appellant, v Jennifer Baranovich,
et al., respondents.

(Index No. 8470/02)

John Fazzini, P.C., Huntington Station, N.Y., for appellant.

Scalzi & Nofi, PLLC, Hicksville, N.Y. (Vincent J. Nofi of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated November 24, 2009, which denied his motion pursuant to CPLR 5015(a)(1) to vacate a prior order of the same court dated February 26, 2008, granting the defendants' unopposed motion pursuant to CPLR 3216 to dismiss the complaint for failure to prosecute.

ORDERED that the order is affirmed, with costs.

The plaintiff failed to demonstrate a reasonable excuse for his default in opposing the defendants' motion pursuant to CPLR 3216 to dismiss the complaint (*see Bazoyah v Herschitz*, 79 AD3d 1081). He also failed to demonstrate a potentially meritorious opposition to the defendants' motion (*id.* at 1082), as he failed to "establish a . . . justifiable excuse for his failure to timely file a note of issue and . . . meritorious cause of action" (*Umeze v Fidelis Care N.Y.*, 17 NY3d 751, 751; *see Gache v Incorporated Vil. of Freeport*, 202 AD2d 470, 470-471). Accordingly, the Supreme Court, on September 20, 2011

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Court properly denied his motion pursuant to CPLR 5015(a)(1) to vacate the prior order granting the defendants' motion.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court