

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

D32341  
Y/prt

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

Argued - September 6, 2011

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

---

2009-07291

DECISION & ORDER

Tony Perpignan, appellant, v First Franklin  
Financial Corp., respondent.

(Index No. 2734/08)

---

Tony Perpignan, Baldwin, N.Y., appellant pro se.

Bryan Cave, LLP, New York, N.Y. (Suzanne M. Berger and Carolyn K. Brooks  
Rincon of counsel), for respondent.

In an action to discharge a note, the plaintiff appeals from an order of the Supreme Court, Nassau County (Lally, J.), dated July 7, 2009, which granted the defendant's motion pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action.

ORDERED that the order is affirmed, with costs.

The plaintiff seeks the discharge of his obligation under a promissory note, on the ground that the note was materially altered after he executed it. However, the plaintiff failed to allege any manner in which the note was materially altered (*see* UCC 3-407, 3-202; *cf.* *National Union Fire Ins. Co. of Pittsburgh, Pa. v Allen*, 232 AD2d 80, 85-86; *NAB Asset Venture III v Stanley Simon Diamonds, Inc.*, 236 AD2d 291; *Modern Indus. Bank v Woodman*, 263 App Div 1019, 1020). Therefore, the Supreme Court properly granted the defendant's motion to dismiss the complaint for failure to state a cause of action.

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court

September 27, 2011

PERPIGNAN v FIRST FRANKLIN FINANCIAL CORP.