

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

D34054
G/kmb

_____AD3d_____

Argued - January 20, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2011-07229

DECISION & ORDER

John L. Stipo, respondent, v Thomas Carpenito,
appellant.

(Index No. 11850/10)

Steven E. DeYoung, P.C. (Stephen D. Chakwin, Jr., New York, N.Y., of counsel),
for appellant.

Monteleone & Monteleone, Mount Kisco, N.Y. (Gregory A. Monteleone of counsel),
for respondent.

In an action to enforce a promissory note, the defendant appeals from an order of the Supreme Court, Westchester County (Murphy, J.), dated June 10, 2011, which denied his motion pursuant to CPLR 5015(a)(2) to vacate a money judgment of the same court dated January 18, 2011, which is in favor of the plaintiff and against him in the principal sum of \$40,000.

ORDERED that the order is affirmed, with costs.

In a prior order dated December 7, 2010, the Supreme Court granted the plaintiff's motion for summary judgment on the complaint after rejecting, as "insufficient to defeat [the] plaintiff's motion," the "conclusory allegations" that the defendant had asserted in opposition. A money judgment dated January 18, 2011, in the principal sum of \$40,000, was thereafter entered. The defendant then made the postjudgment motion now under review in which, relying on documents that predated the judgment, he sought to have the judgment vacated pursuant to CPLR 5015(a)(2).

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We agree with the Supreme Court that the defendant failed to demonstrate any entitlement to relief pursuant to CPLR 5015(a)(2). The defendant failed adequately to explain why these recently offered documents could not have been produced much sooner, at the time of the prior motion for summary judgment (*see generally Ferdico v Zweig*, 82 AD3d 1151). In any event, the purportedly newly discovered evidence would not have “produced a different result” on the plaintiff’s motion for summary judgment (CPLR 5015[a][2]; *see generally Matter of American Comm. for Weizmann Inst. of Science v Dunn*, 10 NY3d 82, 96; *Cizler v Cizler*, 19 AD2d 819).

Accordingly, the order appealed from must be affirmed.

MASTRO, A.P.J., ANGIOLILLO, ENG and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court