

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

D35765
T/kmb

_____AD3d_____

Submitted - May 1, 2012

DANIEL D. ANGIOLILLO, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2011-05387

DECISION & ORDER

Justin Clarke, et al., appellants, v Allstate Insurance
Company, respondent.

(Index No. 3550/06)

George M. Gavalas, Mineola, N.Y., for appellants.

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Mitchell L. Kaufman of counsel),
for respondent.

In an action, inter alia, to recover damages for breach of an insurance contract, the plaintiffs appeal from an order of the Supreme Court, Nassau County (Lally, J.), dated February 24, 2011, which denied their motion, in effect, for leave to renew and reargue their prior motion pursuant to CPLR 5015 to vacate a prior order of the same court dated July 7, 2009, granting the defendant's motion for summary judgment dismissing the complaint upon their default in opposing the motion, which had been denied in an order of the same court dated October 7, 2010.

ORDERED that the appeal from so much of the order dated February 24, 2011, as denied that branch of the plaintiffs' motion which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order dated February 24, 2011, is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

The Supreme Court providently exercised its discretion in denying that branch of the plaintiffs' motion which was for leave to renew their prior motion pursuant to CPLR 5015 to vacate

August 1, 2012

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a prior order of the same court dated July 7, 2009, granting the defendant's motion for summary judgment dismissing the complaint upon the plaintiffs' default in opposing the motion. The plaintiffs failed to present any explanation, much less a reasonable justification, for their failure to present certain alleged new facts on their prior motion (*see* CPLR 2221[e][3]; *Dervisevic v Dervisevic*, 89 AD3d 785, 787; *Zito v Jastremski*, 84 AD3d 1069, 1071; *Ravnikar v Skyline Credit-Ride, Inc.*, 79 AD3d 1118, 1120).

ANGIOLILLO, J.P., ENG, LOTT and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court