

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

D35920  
O/hu

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

Argued - June 19, 2012

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

2011-11116

DECISION & ORDER

John Kranenberg, appellant, v TKRS Pub, Inc., doing  
business as Bungalow Bills Saloon, et al., respondents.

(Index No. 26215/07)

Miller Eisenman & Kanuck, LLP, New York, N.Y. (Michael P. Eisenman of  
counsel), for appellant.

Abrams, Gorelick, Friedman & Jacobson, LLP, New York, N.Y. (Jessica F. Napoli  
of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited  
by his notice of appeal and brief, from so much of an order of the Supreme Court, Queens County  
(Butler, J.), entered October 18, 2011, as denied that branch of his motion which was for leave to  
renew his opposition to those branches of the defendants' motion which were for summary judgment  
dismissing the first and third causes of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The relevant facts are set forth in a related appeal (*see Kranenberg v TKRS Pub, Inc.*,  
\_\_\_\_\_AD3d\_\_\_\_\_ [Appellate Division Docket No. 2011-07679; decided herewith]).

In his original papers submitted in opposition to the defendants' motion for summary  
judgment, the plaintiff submitted a videotape without any evidence of its authenticity and, thus, the  
Supreme Court declined to consider it. The Supreme Court granted those branches of the  
defendants' motion which were for summary judgment dismissing the first and third causes of  
action, and the plaintiff subsequently moved, inter alia, for leave to renew his opposition to those

branches of the defendants' motion, again submitting the videotape, together with an affidavit to authenticate it.

A motion for leave to renew must be "based upon new facts not offered on the prior motion that would change the prior determination," and must provide a "reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][2], [3]; *see Rowe v NYCPD*, 85 AD3d 1001, 1003; *Matter of Korman v Bellmore Pub. Schools*, 62 AD3d 882, 884). Here, even assuming that the plaintiff's excuse for failing to provide the affidavit in his original opposition papers could be deemed a reasonable justification, the facts derived from the videotape did not raise a triable issue of fact as to the first and third causes of action, and thus, the videotape would not have changed the Supreme Court's prior determination granting those branches of the defendants' motion which were for summary judgment dismissing those causes of action (*see Millan v AMF Bowling Ctrs., Inc.*, 38 AD3d 860, 861). Accordingly, leave to renew was properly denied (*see Matter of Korman v Bellmore Pub. Schools*, 62 AD3d at 884).

ANGIOLILLO, J.P., DICKERSON, BELEN and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court