

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

D19839
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_____AD3d_____

Argued - May 22, 2008

STEVEN W. FISHER, J.P.
EDWARD D. CARNI
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2007-04687

DECISION & ORDER

Haydee Muriel, etc., et al., appellants, v New York
City Health and Hospitals Corporation, et al.,
defendants, Bronx Lebanon Hospital Center,
respondent.

(Index No. 1686/04)

William A. Gallina (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac], of counsel), for appellants.

Heidell, Pittoni, Murphy & Bach, LLP, New York, N.Y. (Daniel S. Ratner of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Jackson, J.), dated March 26, 2007, which denied their motion to vacate an order of the same court dated January 11, 2006, granting the unopposed motion of the defendant Bronx Lebanon Hospital Center to dismiss the complaint insofar as asserted against it.

ORDERED that the order dated March 26, 2007, is affirmed, with costs.

The Supreme Court properly denied the plaintiffs' motion to vacate their default in opposing the motion of the defendant Bronx Lebanon Hospital Center to dismiss the complaint insofar as asserted against it. Regardless of whether the law-office failure leading to the plaintiffs' nonappearance in the courtroom on the motion's original return date might be considered a reasonable excuse, the plaintiffs failed to provide evidence of a meritorious cause of action.

June 24, 2008

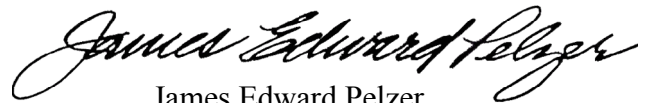
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Moreover, the action may be brought only by a qualified personal representative of the decedent and the “proposed administratrix” lacked capacity to proceed in this action (*see Carrick v Central Gen. Hosp.*, 51 NY2d 242).

FISHER, J.P., CARNI, McCARTHY and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court