

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

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Submitted - September 3, 2008

STEVEN W. FISHER, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-10259

DECISION & ORDER

Joshua Rubinfeld, appellant, v County of Suffolk,
respondent.

(Index No. 24637/97)

Birbrower Beldock & Margolis, P.C. (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Diane K. Toner], of counsel), for appellant.

Christine Malafi, County Attorney, Hauppauge, N.Y. (Christopher A. Jeffreys of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Emerson, J.), dated September 17, 2007, as denied that branch of his motion which was to vacate a prior order of the same court dated January 23, 2007, granting the defendant's unopposed motion for summary judgment dismissing the complaint.

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

In an order dated January 23, 2007, the Supreme Court granted the defendant's motion for summary judgment dismissing the complaint, without opposition from the plaintiff. In the order appealed from, the Supreme Court, inter alia, denied that branch of the plaintiff's motion which was to vacate that order. We affirm the order insofar as appealed from.

September 30, 2008

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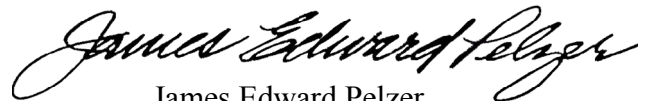
RUBINFELD v COUNTY OF SUFFOLK

While the plaintiff arguably established a reasonable excuse for failing to oppose the summary judgment motion, he failed to demonstrate that he had a meritorious opposition to the motion (*see generally Simpson v Tommy Hilfiger USA, Inc.*, 48 AD3d 389). In that regard, we note that the plaintiff did not even attempt, in his motion to vacate his default, to establish that he had a meritorious cause of action.

In light of our determination, we need not reach the plaintiff's remaining contentions.

FISHER, J.P., LIFSON, COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court