

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

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Submitted - September 27, 2006

ROBERT W. SCHMIDT, J.P.
DAVID S. RITTER
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-00011

DECISION & ORDER

Jeanne M. Marzullo, appellant, v General Motors Corporation, respondent, et al., defendant.

(Index No. 1993/01)

Sadis & Goldberg, LLC, New York, N.Y. (Francis Bigelow of counsel), for appellant.

The Rose Law Firm, PLLC, Albany, N.Y. (Keith B. Rose and Jon B. Waldorf of counsel), for respondent.

In an action to recover damages pursuant to General Business Law § 198-a, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Pagones, J.), dated December 2, 2005, which granted the motion of the defendant General Motors Corporation to deem her application for an award of a statutory attorney's fee abandoned pursuant to 22 NYCRR 202.48 on the ground that she had failed to settle an order and judgment within 60 days, and denied her cross motion for an extension of time to settle an order and judgment.

ORDERED that the order is reversed, on the law and in the exercise of discretion, with costs, the motion is denied, and the cross motion is granted; and it is further,

ORDERED that the matter is remitted to the Supreme Court, Dutchess County, for further proceedings in accordance herewith.

The Supreme Court improvidently exercised its discretion in granting the respondent's

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motion to deem the plaintiff's application for an award of a statutory attorney's fee abandoned pursuant to 22 NYCRR 202.48 on the ground that the plaintiff failed to settle an order and judgment within 60 days. The plaintiff set forth a valid excuse for the short delay, the plaintiff's actions were devoid of any intent to abandon her claim, and the record evinces a lack of prejudice to the respondent (*see* CPLR 2005; *Lawton v Lawton*, 239 AD2d 866; *Parisi v McElhatton*, 209 AD2d 495; *Levine v Levine*, 179 AD2d 625).

SCHMIDT, J.P., RITTER, MASTRO, FISHER and DILLON, 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