

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

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_____AD3d_____

Submitted - October 11, 2006

ANITA R. FLORIO, J.P.
STEPHEN G. CRANE
ROBERT A. SPOLZINO
JOSEPH COVELLO, JJ.

2006-03838

DECISION & ORDER

Lance Breger, plaintiff-respondent, v City of New York, defendant-respondent, et al., defendant, Marvin Hellman, et al., appellants.

(Index No. 30948/96)

Caulfield Law Office, New York, N.Y. (Mark E. Dwyer and David S. Heller of counsel), for appellants.

Mark E. Feinberg, Brooklyn, N.Y., for plaintiff-respondent.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Julie Steiner of counsel), for defendant-respondent (no brief filed).

In an action to recover damages for personal injuries, the defendants Marvin Hellman and Rozi Hellman appeal from an order of the Supreme Court, Kings County (Hinds-Radix, J.), dated March 1, 2006, which denied their motion for leave to serve an amended answer.

ORDERED that the order is affirmed, with costs to the plaintiff-respondent.

The Supreme Court providently exercised its discretion in denying the appellants' motion for leave to serve an amended answer. The appellants did not offer a sufficient excuse for failing to make this motion until almost nine years after serving their original answer in 1996. Moreover, the defendants' prior admissions contradict at least one of the allegations set out in their

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proposed amended answer (*see Surgical Design Corp. v Correa*, 31 AD3d 744; *Dahlin v Paladino*, 14 AD3d 647; *cf. ABFT-II, LLC v Country Vil. of Mooney Pond*, 21 AD3d 972).

FLORIO, J.P., CRANE, SPOLZINO and COVELLO, 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