

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

D12815
T/cb

_____AD3d_____

Argued - October 12, 2006

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-06727

DECISION & ORDER

Michelle Mizell, appellant, v Eastman & Bixby
Redevelopment Co., LLC, et al., respondents.

(Index No. 7501/03)

Jonathan J. Oxenberg, Jericho, N.Y. (Eric C. Sorenson, Brooklyn, N.Y., of counsel),
for appellant.

Steven R. Sundheim & Associates, LLC, White Plains, N.Y. (Michael L. Marinelli of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Bucaria, J.), entered June 10, 2005, which granted the
defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for
summary judgment dismissing the complaint is denied.

Contrary to the defendants' contentions, *Brill v City of New York* (2 NY3d 648)
applies to cases such as the present one, where a movant makes a motion for summary judgment after
the expiration of a court-ordered deadline which is shorter than the 120-day deadline set forth in
CPLR 3212[a] (*see Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725; *Brooks v Ross*, 24 AD3d
589). Since the defendants failed to demonstrate the existence of good cause for their failure to make

their motion for summary judgment prior to the expiration of the court-ordered deadline, the Supreme Court should have denied the motion.

FLORIO, J.P., KRAUSMAN, LUNN and COVELLO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court