

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

D13191  
G/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 6, 2006

GLORIA GOLDSTEIN, J.P.  
PETER B. SKELOS  
ROBERT J. LUNN  
JOSEPH COVELLO, JJ.

---

2006-01233

DECISION & ORDER

Mohammad Kazim Ali, et al., respondents,  
v Joy Patrice Moss, et al., appellants.

(Index No. 6419/05)

---

Morris, Duffy, Alonso & Faley, LLP, New York, N.Y. (Yolanda L. Ayala, Anna J. Ervolina, and Andrea M. Alonso of counsel), for appellants.

Herbert G. Pitkowsky, Oceanside, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Kings County (Ambrosio, J.), dated December 19, 2005, which denied their motion pursuant to CPLR 3211 to dismiss the complaint, inter alia, as time barred, and granted the plaintiffs' cross motion, among other things, to deem the complaint timely filed.

ORDERED that the order is reversed, on the law, with costs, the motion to dismiss the complaint is granted, and the cross motion is denied.

The plaintiffs admittedly failed to commence this action by filing a summons with notice or a summons and complaint within the relevant period of limitations (*see Marino v Proch*, 258 AD2d 628; CPLR 214[5]). Further, the plaintiffs failed to establish any basis to estop the defendants from interposing a statute of limitations defense (*see Zumpano v Quinn*, 6 NY3d 666; *Kiernan v Long Island R.R.*, 209 AD2d 588). Thus, as the plaintiffs raised no other basis to sustain the action, and the courts, in general, have no inherent power to extend a period of limitations in the interest of justice, the complaint should have been dismissed as time barred (*see Dioguardi v Glassey*, 5 AD3d 430; *Marino v Proch*, *supra*; CPLR 201).

December 19, 2006

Page 1.

ALI v MOSS

In light of our determination, the parties' remaining contentions have been rendered academic.

GOLDSTEIN, J.P., SKELOS, 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.

James Edward Pelzer  
Clerk of the Court