

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

D13598
T/hu

_____AD3d_____

Argued - December 11, 2006

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

2005-07105

DECISION & ORDER

Judy Yuh-Neu Chou, appellant, v A to Z
Vending Service Corp., respondent (and a third-
party action).

(Index No. 22936/01)

Michael A. Cervini, Jackson Heights, N.Y. (Robin Mary Heaney of counsel), for
appellant.

John P. Humphreys, Melville, N.Y. (Scott W. Driver of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Queens County (Agate, J.), dated July 7, 2005, which granted the
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant demonstrated a good cause for its delay in making a motion for
summary judgment, and the motion court providently exercised its discretion in entertaining the late
motion (*see* CPRL 3212[a]; *Brill v City of New York*, 2 NY3d 648, 652; *Olivier v Rodney*, 27 AD3d
631; *Certified Elec. Contr. Corp. v City of New York*, 23 AD3d 596; *Herrera v Felice Realty Corp.*,
22 AD3d 723). On the merits, the defendant submitted evidence sufficient to establish its entitlement
to judgment as a matter of law by demonstrating that the allegedly negligent third-party defendant
was an independent contractor, over whom it exercised no control, and not one of its employees (*see*
Kleeman v Rheingold, 81 NY2d 270, 273; *Rosenberg v Equitable Life Assur. Socy. of U.S.*, 79

January 23, 2007

Page 1.

CHOU v A TO Z VENDING SERVICE CORP.

NY2d 663, 668; *Abreu v Schneilwert*, 303 AD2d 527; *Melting v Punia & Marx*, 303 AD2d 386; *Mercado v Slope Assoc.*, 246 AD2d 581). In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

KRAUSMAN, J.P., FLORIO, 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