

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

D13862  
G/cb

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

Argued - January 12, 2007

ROBERT W. SCHMIDT, J.P.  
STEPHEN G. CRANE  
STEVEN W. FISHER  
THOMAS A. DICKERSON, JJ.

2005-09710

DECISION & ORDER

Maloney Carpentry, Inc., appellant, v George  
Budnik, et al., respondents.

(Index No. 432/01)

Richard I. Goldsand, Brewster, N.Y., for appellant.

Harold, Salant, Strassfield & Spielberg, White Plains, N.Y. (Leonard I. Spielberg and  
Rachel J. Filasto of counsel), for respondents.

In an action to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Putnam County (O'Rourke, J.), dated September 15, 2005, which granted the defendants' motion for leave to amend their answer.

ORDERED that the order is affirmed, with costs.

Leave to amend or supplement pleadings should be freely granted unless the amendment sought is palpably improper or insufficient as a matter of law, or unless prejudice and surprise directly result from the delay in seeking the amendment (*see* CPLR 3025[b]; *McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp.*, 59 NY2d 755, 757; *Adams v Jamaica Hosp.*, 258 AD2d 604, 605; *Nissenbaum v Ferazzoli*, 171 AD2d 654, 655). Here, the defendants demonstrated that the proposed amendments have merit, and the plaintiff cannot claim prejudice or surprise since the proposed amendments arise out of the same facts as those underlying the action brought by the plaintiff (*see* *Huntington v Trotta Auto Wreckers*, 257 AD2d 647; *Nissenbaum v Ferazzoli, supra*). Moreover, under the circumstances, the defendants presented a reasonable excuse for the delay in seeking such relief (*cf.* *Andre-Long v Verizon Corp.*, 31 AD3d 353, 355; *Huntington*

February 13, 2007

Page 1.

MALONEY CARPENTRY, INC. v BUDNIK

*v Trotta Auto Wreckers, supra*). Accordingly, the Supreme Court providently exercised its discretion in granting the defendants' motion for leave to amend their answer.

The plaintiff's remaining contention is without merit.

SCHMIDT, J.P., CRANE, FISHER and DICKERSON, 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