

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

D14122
C/mv

_____AD3d_____

Submitted - January 10, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
ROBERT A. LIFSON
THOMAS A. DICKERSON, JJ.

2006-07746

DECISION & ORDER

Timothy White, Jr., respondent, v City of
Mount Vernon, appellant, et al., defendants.

(Index No. 17221/04)

Martino & Weiss, Mount Vernon, N.Y. (Louis J. Martino of counsel), for appellant.

Harry M. Stokes, Granite Springs, N.Y., for respondent.

In an action, inter alia, to recover damages for civil rights violations pursuant to 42 USCA § 1983, the defendant City of Mount Vernon appeals from an order of the Supreme Court, Westchester County (Smith, J.), dated July 6, 2006, which granted the plaintiff's motion for leave to amend the complaint to substitute the true names of the defendants John Does I through III.

ORDERED that the order is affirmed, with costs.

“The determination whether to grant leave to amend a pleading is within the court’s discretion, and the exercise of that discretion will not lightly be disturbed” (*AFBT-II, LLC v Country Vil. On Mooney Pond, Inc.*, 21 AD3d 972, 972; *see* CPLR 1024, 3025[b]). Under the facts of this case, the Supreme Court providently exercised its discretion in granting the plaintiff’s motion (*see Reznick v MTA/Long Is. Bus.*, 7 AD3d 773, 774; *Mangan v White Plains Hosp. Med. Ctr.*, 136 AD2d 608; *Gottlieb v County of Nassau*, 92 AD2d 858).

The appellant's claim that the plaintiff's motion should have been denied as time barred is without merit (*see Reznick v MTA/Long Is. Bus, supra*).

RIVERA, J.P., SPOLZINO, FISHER, LIFSON 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