

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

D14209
W/gts

_____AD3d_____

Argued - January 22, 2007

DAVID S. RITTER, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2006-03283

DECISION & ORDER

Karl McGriff, et al., respondents, v New York City
Health and Hospitals Corporation, et al., appellants.

(Index No. 19455/04)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein
and Sharyn Rootenberg of counsel), for appellants.

Law Offices of Joshua A. Schulman, LLC (Stephen D. Chakwin, Jr., of counsel), for
respondents.

In an action to recover damages for medical malpractice, etc., the defendants appeal
from an order of the Supreme Court, Queens County (Kitzes, J.), entered March 8, 2006, which
denied their motion to dismiss the complaint for failure to serve a timely notice of claim.

ORDERED that the order is reversed, on the law, with costs, and the defendants'
motion to dismiss the complaint for failure to serve a timely notice of claim is granted.

Prior to commencing this action to recover damages for medical malpractice, the
plaintiffs neither served a timely notice of claim upon the defendants, as required by statute, nor
sought leave, within the relevant one-year-and-90-day limitations period, to serve a late notice of
claim (*see* McKinney's Unconsolidated Laws of NY § 7401[2]; General Municipal Law §§ 50-e[5],
50-i; *Pierson v City of New York*, 56 NY2d 950; *Urena v New York City Health & Hosps. Corp.*, 35
AD3d 446; *Maxwell v City of New York*, 29 AD3d 540). Thus, the Supreme Court should have
granted the defendants' motion to dismiss the complaint.

March 6, 2007

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The plaintiffs' contention, raised before the Supreme Court, that the relevant period of limitations was tolled by the continuous treatment doctrine, is without merit (*see Allende v New York City Health & Hosps. Corp.*, 90 NY2d 333).

The plaintiffs' remaining contentions are without merit (*see e.g. Wade v New York City Health & Hosps. Corp.*, 16 AD3d 677; *Cappadonna v New York City Tr. Auth.*, 187 AD2d 691).

RITTER, J.P., SANTUCCI, SKELOS 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