

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

D14573
W/cb

_____AD3d_____

Submitted - March 2, 2007

FRED T. SANTUCCI, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-03399

DECISION & ORDER

Emma Kuryla, et al., plaintiffs-respondents, v Salim Halabi, et al., defendants, Daimler Chrysler Services NA, LLC, appellant, et al., defendant.

(Index No. 28204/04)

Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York, N.Y. (Roy J. Karlin of counsel), for appellant.

Maggiano, DiGirolamo, Lizzi & Roberts, New York, N.Y. (Michael Lizzi of counsel), for plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendant Daimler Chrysler Services NA, LLC, appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Schack, J.), dated January 17, 2006, as granted that branch of the plaintiffs' motion which was for leave to amend the complaint to add it as a defendant in the action.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, that branch of the plaintiffs' motion which was for leave to amend the complaint to add the appellant as a defendant in the action is denied, and the caption is amended so as to delete Daimler Chrysler Services NA, LLC, as a defendant.

The Supreme Court erred in granting that branch of the plaintiffs' motion which was for leave to amend the complaint to add Daimler Chrysler Services NA, LLC (hereinafter Daimler Chrysler), as a defendant. The cause of action sought to be asserted against Daimler Chrysler was interposed after the effective date of 49 USC § 30106, which bars the plaintiffs from asserting that

April 3, 2007

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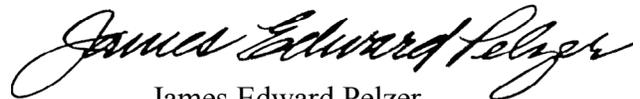
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cause of action against Daimler Chrysler under the circumstances presented here. Moreover, the plaintiffs' reliance upon the relation-back doctrine to avoid the operation of 49 USC § 30106 is without merit, as that doctrine is potentially available only to save claims which a defendant asserts are barred by a statute of limitations (*see Jones v Bill*, 34 AD3d 741, 742; *see also Monir v Khandakar*, 30 AD3d 487; *DeLuca v Baybridge at Bayside Condominium I*, 5 AD3d 533, 534; *L&L Plumbing & Heating v DePalo*, 253 AD2d 517), and no statute of limitations defense is implicated in this action.

We do not consider the plaintiffs' alternative contention, as it is asserted for the first time on appeal (*see Militrano v Lederle Labs.*, 26 AD3d 475, 478; *Lang v Cohalan*, 127 AD2d 17, 21).

SANTUCCI, J.P., KRAUSMAN, LIFSON and DILLON, 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