

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

D14701
O/cb

_____AD3d_____

Submitted - March 8, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2006-05184

DECISION & ORDER

New York State Division of Human Rights, etc.,
appellant, v Oceanside Cove II Apartment
Corporation, respondent.

(Index No. 9436/04)

Gina M. Lopez Summa, Bronx, N.Y. (Thelma Joy B. Rodriguez of counsel), for
appellant.

Marc H. Schneider, P.C., Garden City, N.Y. (Ryan Mitola of counsel), for respondent.

In an action, inter alia, pursuant to Executive Law § 297(9) to recover damages for housing discrimination, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (McCarty, J.), dated March 24, 2006, as denied its application to extend the time for service of the summons and complaint pursuant to CPLR 306-b.

ORDERED that the appeal is dismissed, with costs, as no appeal lies as of right from an order that does not decide a motion made on notice (*see* CPLR 5701[a][2]), and leave to appeal has not been granted (*see* CPLR 5701[c]).

The plaintiff, having conceded the impropriety of its service of the summons and complaint, was relegated to seeking an extension of the time to effect service under CPLR 306-b. Rather than making a motion for this relief, the plaintiff, in opposing the defendant's cross motion, inter alia, to dismiss for lack of in personam jurisdiction, merely asked for this extension and argued why it should be granted. This constituted a violation of CPLR 2215, as amended (*see Khaolaead*

April 10, 2007

Page 1.

NEW YORK STATE DIVISION OF HUMAN RIGHTS v
OCEANSIDE COVE II APARTMENT CORPORATION

v Leisure Video, 18 AD3d 820, 821; *Hergerton v Hergerton*, 235 AD2d 395, 396; *Thomas v Drifters*, 219 AD2d 639, 640; *Matter of Barquet v Rojas-Castillo*, 216 AD2d 463; *Matter of Briger*, 95 AD2d 887, 888; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C2215:1; Siegel, NY Prac § 249, at 423 [4th ed]). Since the plaintiff merely requested this relief in its opposition papers, and did not make a motion on notice as defined in CPLR 2211, the plaintiff is not entitled to appeal as of right from the order denying its request to extend the time for service of the summons and complaint (*see* CPLR 5701[a][2]; *Thompson v 76 Corp.*, 37 AD3d 450; Siegel, NY Prac § 526, at 897).

CRANE, J.P., KRAUSMAN, COVELLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court