

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

D14850
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_____AD3d_____

Submitted - March 21, 2007

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-05269

DECISION & ORDER

James Bennerman, appellant, v General Motors Corporation, respondent, et al., defendants.

(Index No. 5222/01)

Klein & Folchetti (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac] of counsel), for appellant.

Thorn Gershon Tymann and Bonanni, LLP, Albany, N.Y. (Erin George of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Brands, J.), dated May 5, 2006, which denied his motion, inter alia, pursuant to CPLR 2004 to extend his time to move, in effect, to restore the action to the trial calendar pursuant to CPLR 3404.

ORDERED that the appeal is dismissed as academic, with costs.

As a result of a subsequent order of the Supreme Court, Dutchess County, dated July 11, 2006, which granted that branch of the plaintiff's motion which was to restore the action to the trial calendar, the issue of whether the court properly denied the plaintiff's motion, inter alia, to

April 24, 2007

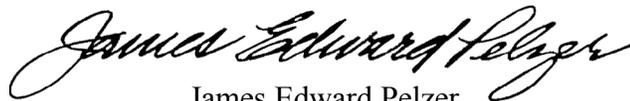
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extend his time to move, in effect, to restore the action to the trial calendar pursuant to CPLR 3404 has been rendered academic (*cf.* CPLR 3402[a]; *Damas v Barboza*, 206 AD2d 346, 346-347).

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court