

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

D14903
C/cb

_____AD3d_____

Submitted - March 21, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-09873

DECISION & ORDER

Lai Har Chin, respondent, v Anderson D. Yard,
appellant.

(Index No. 35201/00)

Ronald I. Lemberger (Shayne, Dachs, Stanisci, Corker & Sauer, LLP, Mineola, N.Y.
[Norman H. Dachs and Jonathan A. Dachs] of counsel), for appellant.

Barry E. Schulman, Brooklyn, N.Y. (Deborah Santelmo of counsel), for respondent.

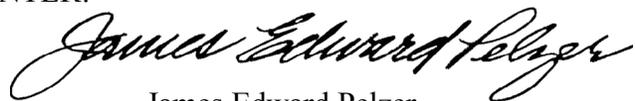
In an action to recover damages for personal injuries, the defendant appeals from so much of an order of the Supreme Court, Kings County (Johnson, J.), dated September 14, 2006, as denied his motion to dismiss the complaint pursuant to CPLR 3012(b).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant waived late service of the complaint by accepting and retaining the complaint, without objection, before moving to dismiss the complaint pursuant to CPLR 3012(b) approximately eight months later (*see Ligotti v Wilson*, 287 AD2d 550, 551; *Chiulli v Coyne*, 210 AD2d 450; *Myers v Empire State Bldg*, 53 AD2d 662, 663). Accordingly, the Supreme Court providently exercised its discretion in denying the defendant's motion to dismiss.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 1, 2007

LAI HAR CHIN v YARD