

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

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_____AD3d_____

Submitted - April 16, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-08439

DECISION & ORDER

Sonia Peguero, respondent, v Douglas Finnie,
et al., appellants.

(Index No. 20920/01)

Epstein, Rayhill & Frankini, Woodbury, N.Y. (Mona Haas of counsel), for appellants.

Mallilo & Grossman, Flushing, N.Y. (Beth Girsch of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Satterfield, J.), dated July 13, 2006, as granted the plaintiffs' cross motion for an extension of time pursuant to CPLR 306-b to serve the summons and complaint.

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

The instant action was commenced by filing a summons and complaint approximately seven months after the accident. The purported service of process in October 2001 by delivery and mail pursuant to CPLR 308(2) at premises in East Elmhurst owned by the defendants until March 2002, but where the defendants neither resided nor had their place of business, was improper. However, the plaintiff moved for relief pursuant to CPLR 306-b immediately after she learned that the defendants were contesting the validity of service and submitted proof that her claim was meritorious. Further, the Supreme Court noted that the plaintiff "diligently pursued this action" and each time the plaintiff sought court intervention, "defendants were noticed at the East Elmhurst

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address.” Under the circumstances of this case, the determination of the Supreme Court was a proper exercise of its discretion (*see Slate v Schiavone Constr. Co.*, 4 NY3d 816; *Baione v Zambrano*, 22 AD3d 698, 699).

SCHMIDT, J.P., GOLDSTEIN, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court