

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

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Submitted - May 2, 2007

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

2006-06452

DECISION & ORDER

Roger Pierre, et al., respondents, v Pavel Feldman,
appellant, et al., defendants.

(Index No. 50417/02)

James G. Bilello, Westbury, N.Y. (Peter T. Neill of counsel), for appellant.

Mitchell N. Kay, P.C., Brooklyn, N.Y. (Patrick J. McGrath of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendant Pavel Feldman appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Harkavy, J.), dated April 12, 2006, as denied his motion pursuant to CPLR 3212 for leave to serve and file a late motion for summary judgment, and summary judgment dismissing the complaint insofar as asserted against him.

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

Pursuant to Rule 13 of the Uniform Civil Term Rules of the Supreme Court, Kings County, the appellant was required to make his motion for summary judgment no more than 60 days after the note of issue was filed, unless he obtained leave of the court on good cause shown. His motion was made more than 60 days after the plaintiffs filed a note of issue on May 27, 2005, and the excuse proffered by the appellant's attorney was insufficient to constitute good cause for the delay (*see* CPLR 2211; 3212 [a]; *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725; *Brill v City of New*

York, 2 NY3d 648, 652; *Breiding v Giladi*, 15 AD3d 435). Accordingly, the appellant's motion was properly denied as untimely.

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