

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

D16365
G/kmg

_____AD3d_____

Submitted - September 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-03519

DECISION & ORDER

Victor Sumba, respondent, v Olinda Sampaio, et al.,
appellants.

(Index No. 12569/06)

Baxter, Smith, Tassan & Shapiro, P.C., White Plains, N.Y. (Terri S. Hall of counsel),
for appellants.

Tully Law Office, P.C., Yorktown Heights, N.Y. (Tara A. Tully of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Westchester County (Nicolai, J.), entered April 6, 2007, which denied
their motion pursuant to CPLR 4102(e) for leave to file a jury demand nunc pro tunc.

ORDERED that the order is affirmed, with costs.

The defendants failed to make an adequate factual showing that their failure to timely
file a jury demand was the result of inadvertence or other excusable default (*see Behrmann v Heinz
Pet Prods.*, 215 AD2d 619; *Tarantino v City of New York*, 148 AD2d 601; *Joseph v. Exxon Corp.*,
83 AD2d 549; *cf. Lane v Marshall*, 89 AD2d 579; *Calspan Corp. v Fingermatrix, Inc.*, 84 AD2d
826). Accordingly, the Supreme Court properly exercised its discretion in denying the defendants'
motion.

SCHMIDT, J.P., SPOLZINO, SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 2, 2007

SUMBA v SAMPAIO