

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

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Submitted - October 3, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2007-00205

DECISION & ORDER

Samah Abu-Aqlein, respondent, v Sammy El-Jamal,
appellant.

(Index No. 8396/06)

Parisi & Patti, LLP, White Plains, N.Y. (Clement S. Patti, Jr., of counsel), for
appellant.

Lenihan & Associates, LLC, White Plains, N.Y. (James M. Lenihan of counsel), for
respondent.

In an action to recover damages for defamation, intentional infliction of emotional
distress, and battery, the defendant appeals from an order of the Supreme Court, Westchester County
(Donovan, J.), entered December 15, 2006, which denied his motion pursuant to CPLR 306-b to
dismiss the complaint and granted the plaintiff's cross motion pursuant to CPLR 306-b to extend her
time to serve the summons with notice and to file her complaint nunc pro tunc.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the defendant's
motion to dismiss the complaint and in granting the plaintiff's cross motion pursuant to CPLR 306-b
to extend the time to serve the summons with notice and to file her complaint nunc pro tunc in the
interest of justice (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106; *Rosenzweig
v 600 N. St., LLC*, 35 AD3d 705, 706). The plaintiff's time to effect service of process was properly

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extended since the verified complaint demonstrated the merits of the action, the summons with notice was served only 17 days after the 120-day time period ended, there was no demonstrable prejudice to the defendant and, with respect to the cause of action alleging battery, the statute of limitations had expired between the time that the summons with notice was filed and the time that it was served (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106; *Beauge v New York City Tr. Auth.*, 282 AD2d 416; *Busler v Corbett*, 259 AD2d 13).

RIVERA, J.P., KRAUSMAN, FLORIO, CARNI and BALKIN, 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