

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

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_____AD3d_____

Submitted - January 2, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
MARK C. DILLON
RUTH C. BALKIN, JJ.

2007-04583

DECISION & ORDER

State Farm Fire and Casualty, as subrogee of
Joseph N. Misk, respondent, v Parking Systems
Valet Service, appellant.

(Index No. 25150/04)

Stephen David Fink, Forest Hills, N.Y., for appellant.

Serpe, Andree & Kaufman, Huntington, N.Y. (Jonathan H. Kaufman of counsel), for respondent.

In a subrogation action to recover insurance benefits paid to the plaintiff's insured, the defendant appeals from an order of the Supreme Court, Queens County (Schulman, J.), entered April 25, 2007, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment on the issue of liability is denied.

The plaintiff was required to make its motion for summary judgment no more than 120 days after the note of issue was filed, unless it obtained leave of the court on good cause shown (*see* CPLR 3212[a]). The vague and conclusory assertions made by plaintiff's counsel regarding "settlement talks" with defense counsel were insufficient to constitute good cause for the six-month delay in making the motion for summary judgment (*see Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 726; *Brill v City of New York*, 2 NY3d 648, 652; *Perini Corp. v City of New York*

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[*Department of Env'tl. Protection*], 16 AD3d 37, 40; *Neves v Port Auth. of N.Y. & N.J.*, 265 AD2d 393, 394). Accordingly, the Supreme Court erred in reaching the merits of the motion (see *McNally v Beva Cab Corp.*, 45 AD3d 820).

SPOLZINO, J.P., SANTUCCI, DILLON 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