

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

D18141
O/nl

_____AD3d_____

Argued - January 22, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2007-07697
2007-09397

DECISION & ORDER

Polina Reznikova, plaintiff-respondent, v Sharone Levy, appellant, Gennadiy Reznikova, defendant-respondent.

(Index No. 2367/06)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for appellant.

Paul A. Hayt, Great Neck, N.Y., for plaintiff-respondent.

James G. Bilello, Westbury, N.Y. (Franshone Winn of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, the defendant Sharone Levy appeals (1) from an order of the Supreme Court, Kings County (Harkavy, J.), dated July 11, 2007, which denied his motion for summary judgment as untimely, and (2), as limited by his brief, from so much of an order of the same court dated September 26, 2007, as, in effect, upon reargument, adhered to the prior determination.

ORDERED that the appeal from the order dated July 11, 2007, is dismissed, as that order was superseded by the order dated September 26, 2007, made, in effect, upon reargument; and it is further,

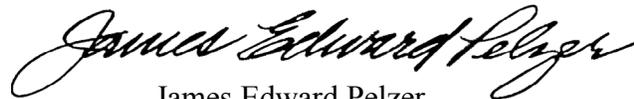
ORDERED that the order dated September 26, 2007, is reversed insofar as appealed from, on the law, upon reargument, the order dated July 11, 2007, is vacated, and the matter is remitted to the Supreme Court, Kings County, for a determination of the merits of the appellant's motion for summary judgment; and it is further,

ORDERED that one bill of costs is awarded to the appellant.

“A motion is made when a notice of motion is served” (*Rivera v Glen Oaks Vil. Owners, Inc.*, 29 AD3d 560, quoting *Russo v Eveco Dev. Corp.*, 256 AD2d 566; see CPLR 2211). In accordance with this rule, the appellant's motion for summary judgment was made on May 31, 2007, when it was served, by mail, on the attorneys for the plaintiff and the defendant Gennadiy Reznikova (see CPLR 2103[b][2]; Weinstein-Korn-Miller, NY Civ. Prac. ¶ 2211.05). Therefore, the service of the motion on May 31, 2007, was timely, and the Supreme Court should have determined the appellant's motion on the merits.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court