

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

D18408  
C/kmg

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Submitted - January 22, 2008

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

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2007-02012

DECISION & ORDER

Nikolaos Kitkas, plaintiff-respondent,  
v Windsor Place Corp., defendant third-party-  
plaintiff and third third-party plaintiff-respondent,  
et al., defendants; T&G Contracting Corp.,  
third-party defendant and second third-party  
plaintiff-respondent; Boca Electric Corp., second  
third-party defendant/third third-party  
defendant-appellant.

(Index No. 713/04)

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Goldstein & Avrutine, Syosset, N.Y. (Steven R. Goldstein and Heather Babits of counsel), for second third-party defendant and third third-party defendant-appellant.

Lawrence Perry Biondi, Garden City, N.Y. (Lisa M. Comeau of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the second third-party defendant/third third-party defendant, Boca Electric Corp., appeals from an order of the Supreme Court, Queens County (Nelson, J.), entered December 14, 2006, which denied, as untimely, its motion for summary judgment, in effect, dismissing all causes of action for contribution and common-law indemnification asserted against it.

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents, and the matter is remitted to the Supreme Court, Queens County, for a determination on the merits of the motion of the second third-party defendant/third third-party

March 11, 2008

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defendant, Boca Electric Corp., for summary judgment, in effect, dismissing all causes of action for contribution and common law indemnification asserted against it.

“A motion on notice is made when a notice of the motion is served” (CPLR 2211; *see Russo v Eveco Dev. Corp.* 256 AD2d 566, 566; *Rivera v Glen Oaks Vil. Owners, Inc.*, 29 AD3d 560, 561). Thus, contrary to the conclusion reached by the Supreme Court, the initial motion for summary judgment made by the second third-party defendant/third third-party defendant, Boca Electric Corp. (hereinafter Boca), was timely when it was served on all opposing counsel by mail on December 16, 2005 (*see* CPLR 2103[b][2]; *see also* Weinstein-Korn-Miller NY Civil Practice section 2211.07). Boca’s subsequent service of an amended notice of motion, in order to schedule the return of the motion on a date permitted by the Supreme Court’s rules of practice, did not render the motion untimely (*see Rivera v Glen Oaks Vil. Owners, Inc.*, 29 AD3d at 562). Accordingly, we remit the matter to the Supreme Court, Queens County, to determine Boca’s motion on the merits.

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

ENTER:

  
James Edward Pelzer  
Clerk of the Court