

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

D18699
G/prt

_____AD3d_____

Submitted - March 12, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-04133

DECISION & ORDER

Moshe Schmidt, etc., et al., appellants,
v City of New York, et al., respondent,
et al., defendants.

(Index No. 28234/06)

Ephrem Wertenteil, New York, N.Y., for appellants.

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Kramer, J.), dated March 16, 2007, which granted the motion of the defendant City of New York pursuant to CPLR 3012(d) to extend the time to appear and answer, and to compel the plaintiffs to accept its verified answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the motion of the defendant City of New York pursuant to CPLR 3012(d) to extend the time to appear and answer, and to compel the plaintiffs to accept its answer, thereby excusing the defendant's delay in serving it (*see* CPLR 2004, 3012[d]). Considering the absence of any prejudice to the plaintiffs, the existence of a potentially meritorious defense, and the public policy favoring the resolution of cases on the merits, we agree with the Supreme Court that, as an exercise of discretion, the City's delay in answering was properly excused (*see Schonfeld v Blue & White Food Prods. Corp.*, 29 AD3d 673,

April 1, 2008

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674; *Yonkers Rib House, Inc. v 1789 Cent. Park Corp.*, 19 AD3d 687, 688; *Trimble v SAS Taxi Co. Inc.*, 8 AD3d 557, 558).

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court