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

D19028
W/hu

_____AD3d_____ Submitted - March 18, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

---

2007-04388 DECISION & ORDER

Michael Zeleznik, et al., appellants, v MSI Construction, Inc., respondent.

(Index No. 2927/05)

---

Thomas P. Halley, Poughkeepsie, N.Y., for appellants.

Freeman Howard, P.C., Hudson, N.Y. (Cailin C. Brennan of counsel), for respondent.

In an action to recover damages for breach of contract, the plaintiffs appeal from an order of the Supreme Court, Dutchess County (Dolan, J.), dated April 24, 2007, which denied their motion pursuant to CPLR 3025(b) for leave to serve an amended complaint.

ORDERED that the order is affirmed, with costs.

Although leave to amend a pleading is to be freely given absent surprise or prejudice resulting from the delay, the determination whether to grant such leave is within the discretion of the motion court, and the exercise of that discretion will not be lightly disturbed (*see* CPLR 3025[b]; *Young v A. Holly Patterson Geriatric Ctr.,* 17 AD3d 667; *Sewkarran v DeBellis,* 11 AD3d 445; *Travelers Prop. Cas. v Powell,* 289 AD2d 564). Moreover, a plaintiff must meet his or her burden of demonstrating that the proposed amendments to the complaint were not palpably insufficient or patently devoid of merit (*see Lucido v Mancuso,* 49 AD3d 220).

In light of the plaintiffs' extended delay in moving for leave to serve an amended complaint and the surprise and prejudice to the defendant resulting therefrom, as well as the plaintiffs' failure to show that the proposed amendments were not palpably insufficient or patently devoid of

merit, the Supreme Court providently exercised its discretion in denying the plaintiffs' motion for leave to serve an amended complaint (*see Lucido v Mancuso,* 49 AD3d 220).

FISHER, J.P., MILLER, CARNI and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court