

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

D19371  
C/hu

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Argued - April 24, 2008

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
EDWARD D. CARNI  
CHERYL E. CHAMBERS, JJ.

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2007-04924

DECISION & ORDER

Marvin Kennedy, plaintiff, v Nanki Bae, defendant,  
Hannah Bae, respondent, VW Credit Leasing  
Ltd., appellant.

(Index No. 30802/03)

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Shapiro, Beilly, Rosenberg & Aronowitz, LLP, New York, N.Y. (Roy J. Karlin of counsel), for appellant.

Longo & D'Apice, Brooklyn, N.Y. (Jonathan Tabar and Mark A. Longo of counsel), for respondent Hannah Bae and defendant Nanki Bae.

In an action to recover damages for personal injuries, the defendant VW Credit Leasing Ltd., appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Starkey, J.), dated April 4, 2007, as denied its motion for summary judgment, in effect, on its cross claims against the defendant Hannah Bae for contractual and common-law indemnification.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Pursuant to Rule 13 of the Uniform Civil Term Rules of the Supreme Court, Kings County, the appellant was required to make its motion for summary judgment no more than 60 days after the note of issue was filed, unless it obtained leave of the court on good cause shown. The appellant's motion was made more than 60 days after the filing of the note of issue, and the excuse proffered by the appellant's attorney was insufficient to constitute good cause for the delay (*see Brill v City of New York*, 2 NY3d 648; *McNally v Beva Cab Corp.*, 45 AD3d 820; *Crawford v Liz Claiborne, Inc.*, 45 AD3d 284; *Milano v George*, 17 AD3d 644; *Breiding v Giladi*, 15 AD3d 435).

May 27, 2008

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Accordingly, we affirm the Supreme Court's order insofar as appealed from on the basis of the untimeliness of the motion alone, and we do not address the merits of the motion (*see Milano v George*, 17 AD3d at 645).

PRUDENTI, P.J., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court