

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

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_____AD3d_____

Submitted - May 21, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-07310

DECISION & ORDER

Malachy Lyons, Jr., appellant, v Paul J. Donnelly,
Jr., respondent.

(Index No. 4806/92)

Cartier, Bernstein, Auerbach & Dazzo, P.C., Patchogue, N.Y. (Steinberg & Boyle,
LLP [Robert G. Steinberg], of counsel), for appellant.

Caputi, Weintraub & Neary, Huntington, N.Y. (Gary N. Weintraub of counsel), for
respondent.

In an action to recover damages for legal malpractice and breach of contract, the plaintiff appeals from an order of the Supreme Court, Nassau County (Lally, J.), dated July 3, 2007, which granted the defendant's motion for leave to make an untimely and successive motion for summary judgment, and thereupon for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion is denied.

CPLR 3212(a) provides that a motion for summary judgment may not be made more than 120 days after the filing of the note of issue "except with leave of court on good cause shown" (*see generally Brill v City of New York*, 2 NY3d 648). The defendant failed to show "good

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cause” for the substantial delay between the filing of the note of issue and the making of the subject motion (*see Soltes v 260 Waverly Owners, Inc.*, 42 AD3d 565, 565-566; *Jones v Ricciardelli*, 40 AD3d 936). Thus, the defendant’s motion should have been denied without consideration of the merits.

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court