

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

D21010
G/prt

_____AD3d_____

Submitted - October 20, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-03784

DECISION & ORDER

Amanda Alvarez, etc., et al., plaintiffs-respondents,
v Elsa Eviles, et al., defendants-respondents,
Honeywell, Inc., appellant.

(Index No. 22196/02)

Pino & Associates, LLP, White Plains, N.Y. (Brian Colistra of counsel, and George W. Flynn and Jonathan A. Strauss, pro hac vice, of counsel), for appellant.

In an action, inter alia, to recover damages for personal injuries, etc., the defendant Honeywell, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Schulman, J.), entered March 18, 2008, as, upon reargument, adhered to an original determination in an order entered June 27, 2007, denying, as untimely, a renewed motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, upon reargument, the order entered June 27, 2007, denying the renewed motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against the defendant Honeywell, Inc., is vacated, and the matter is remitted to the Supreme Court, Queens County, for a determination of the renewed motion for summary judgment on the merits.

Under the circumstances of this case, Honeywell demonstrated “good cause” for the delay in making the renewed motion (*see generally Brill v City of New York*, 2 NY3d 648, 651), since significant discovery was still outstanding after the deposition was taken and Honeywell’s expert witnesses needed to consider the additional discovery in preparing the affidavits submitted on the motion (*see Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124, 129; *Cooper v Hodge*, 13 AD3d 1111,

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1112; *Kunz v Gleeson*, 9 AD3d 480; cf. *Filannino v Triborough Bridge & Tunnel Auth.*, 34 AD3d 280; *Espejo v Hiro Real Estate Co.*, 19 AD3d 360). Thus, the Supreme Court improvidently exercised its discretion, upon reargument, in adhering to its prior determination, denying the renewed motion as untimely.

In light of our determination, we need not address the parties' remaining contentions.

SKELOS, J.P., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer

Clerk of the Court