

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

D21484  
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Argued - November 18, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2008-03884

DECISION & ORDER

Maurice Reep, etc., et al., respondents, v Mamaroneck  
Union Free School District, appellant.

(Index No. 22767/06)

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Traub Lieberman Straus & Shrewsberry LLP, Hawthorne, N.Y. (Jonathan R. Harwood of counsel), for appellant.

Harold, Salant, Strassfield & Spielberg, White Plains, N.Y. (Leonard I. Spielberg of counsel), for respondents.

In an action to recover damages for negligence, the defendant appeals from an order of the Supreme Court, Westchester County (Nicolai, J.), entered December 11, 2008, which denied its motion to dismiss the complaint for failure to serve a timely notice of claim pursuant to Education Law § 3813(1) and as time-barred pursuant to General Municipal Law § 50-i.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the Supreme Court correctly determined that the defendant was estopped from asserting a notice of claim defense as a matter of law (*see Conquest Cleaning Corp. v New York City School Constr. Auth.*, 279 AD2d 546).

Additionally, the Supreme Court properly determined, in effect, that based upon the undisputed facts the defendant was equitably estopped from asserting the statute of limitations defense (*see Zumpano v Quinn*, 6 NY3d 666, 675; *Gleason v Spota*, 194 AD2d 764, 765).

December 16, 2008

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The defendant's remaining contentions are without merit.

RIVERA, J.P., SPOLZINO, CARNI and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court