

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

D22251
O/kmg

_____AD3d_____

Argued - January 22, 2009

STEVEN W. FISHER, J.P.
MARK C. DILLON
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2007-11819
2008-03908

DECISION & ORDER

Nerida E. Betancourt, respondent, v Delta
Airlines, Inc., et al., defendants, City of New
York, et al., appellants.

(Index No. 10102/06)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Norman Corenthal of counsel), for appellants.

Drobenko & Associates, P.C., Astoria, N.Y. (Walter Drobenko of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants City of New
York and New York City Fire Department appeal from (1) an order of the Supreme Court, Queens
County (Kerrigan, J.), dated November 9, 2007, which denied their motion to dismiss the complaint
pursuant to CPLR 3012(b), and (2) an order of the same court dated March 24, 2008, which denied
their motion for leave to reargue.

ORDERED that the appeal from the order dated March 24, 2008, is dismissed; and
it is further,

ORDERED that the order dated November 9, 2007, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The defendants City of New York and New York City Fire Department (hereinafter
together the City) waived late service of the complaint by accepting and retaining the complaint,

March 3, 2009

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without objection, and serving an answer with a demand for a bill of particulars and a demand for discovery and inspection, before making the instant motion to dismiss pursuant to CPLR 3012(b) (*see* CPLR 3018[b]; *Lai Har Chin v Yard*, 40 AD3d 590; *Chiulli v Coyne*, 210 AD2d 450; *Myers v Empire State Bldg*, 53 AD2d 662, 663; *Ligotti v Wilson*, 287 AD2d 550, 551). Accordingly, the court providently exercised its discretion in denying the City's motion to dismiss.

The appeal from the order dated March 24, 2008, must be dismissed, as no appeal lies from an order denying a motion for leave to reargue (*see Lichtenstein v Barenbaum*, 23 AD3d 440; *Fischer v RWSP Realty, LLC*, 19 AD3d 540; *Sallusti v Jones*, 273 AD2d 293, 294; *Bossio v Fiorillo*, 222 AD2d 476, 477).

FISHER, J.P., DILLON, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court