

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

D23058
G/kmg

_____AD3d_____

Submitted - March 18, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-04590

DECISION & ORDER

Shannon Ambrosio, appellant,
v Boris Simonovsky, respondent.

(Index No. 39755/06)

Allen R. Morganstern, P.C., Westbury, N.Y., for appellant.

Abamont & Associates, Brooklyn, N.Y. (Thomas D. Leff of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Schack, J.), dated April 4, 2008, which granted the defendant's motion pursuant to CPLR 306-b to dismiss the complaint and denied his cross motion pursuant to CPLR 306-b to extend his time to serve the summons and complaint.

ORDERED that the order is affirmed, with costs.

In opposition to the defendant's motion to dismiss the complaint pursuant to CPLR 306-b and in support of the plaintiff's cross motion to extend his time to serve the summons and complaint pursuant to that statute, the plaintiff was required to show either good cause for his failure to serve the defendant with the summons and complaint within 120 days after their filing or that an extension of time to effect service should be granted in the interest of justice (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-107; *Riccio v Ghulam*, 29 AD3d 558, 560). The plaintiff failed to show good cause for his failure since he admittedly made no attempt to serve the defendant within 120 days after the filing of the summons and complaint (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d at 105; *Valentin v Zaltsman*, 39 AD3d 852; *Riccio v Ghulam*, 29 AD3d at 560).

May 5, 2009

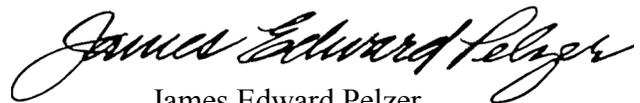
AMBROSIO v SIMONOVSKY

Page 1.

Furthermore, the plaintiff failed to show that an extension of time to serve the defendant was warranted in the interest of justice in view of the lack of diligence shown by the plaintiff, including the one-year delay between the time the summons and complaint were filed and the time the cross motion to extend his time to serve the summons and complaint was made, the 9½-month delay between the expiration of the statute of limitations and the defendant's receipt of notice of the action, the failure to make any showing of merit, and the lack of an excuse for the failure to effect timely service (*see Slate v Schiavone Constr. Co.*, 4 NY3d 816, 817; *American Tel. & Tel. Co. v Schnabel Found. Co.*, 38 AD3d 580; *Ortiz v Malik*, 35 AD3d 560, 560-561; *Meusa v BMW Fin. Servs.*, 32 AD3d 830, 831).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court