

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

D24233  
H/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 17, 2009

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
RANDALL T. ENG  
L. PRISCILLA HALL, JJ.

---

2008-08685

DECISION & ORDER

Nitza Velez, respondent, v ABC Auto &  
Glass, et al., defendants, John Rosatti,  
appellant.

(Index No. 25635/05)

---

Faust Goetz Schenker & Blee LLP, New York, N.Y. (Lisa L. Gokhulsingh of  
counsel), for appellant.

Scott J. Zlotolow, Sayville, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant John Rosatti appeals from so much of an order of the Supreme Court, Kings County (Miller, J.), dated July 24, 2008, as granted the plaintiff's cross motion pursuant to CPLR 306-b for an extension of time to serve the summons and complaint upon him.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the plaintiff's cross motion is denied.

Under the facts of this case, the Supreme Court improvidently exercised its discretion in granting the plaintiff's cross motion pursuant to CPLR 306-b to extend the time within which to serve the summons and complaint upon the defendant John Rosatti. Notwithstanding the expiration of the statute of limitations, the plaintiff did not demonstrate facts and circumstances that would support the grant of such relief in the interest of justice (*see Crystal v Lisnow*, 56 AD3d 713; *Otero v Flushing Hosp.*, 300 AD2d 639, 640; *Rihal v Kirchhoff*, 291 AD2d 548).

September 15, 2009

Page 1.

VELEZ v ABC AUTO & GLASS

The appellant's remaining contention is not properly before this Court (*see Katz v Katz*, 68 AD2d 536, 542-543).

RIVERA, J.P., DILLON, COVELLO, ENG and HALL, 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