

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

D24490
G/hu

_____AD3d_____

Submitted - September 8, 2009

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-04397

DECISION & ORDER

Anthony Chechile, respondent, v Nathaniel Magee,
appellant.

(Index No. 3538/07)

Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Richard E. Lerner of counsel), for appellant.

Stephen N. Preziosi, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Nassau County (McCarty, J.), dated April 20, 2009, which denied, as untimely, his motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in denying, as untimely, the defendant's motion for summary judgment dismissing the complaint. The excuses proffered by the defendant were insufficient to constitute good cause for the delay in making his motion (*see* CPLR 3212[a]; *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725; *Brill v City of New York*, 2 NY3d 648, 652; *Baldessari v Caines*, 61 AD3d 904, 905; *Giudice v Green 292 Madison, LLC*, 50 AD3d 506).

October 6, 2009

Page 1.

CHECHILE v MAGEE

In any event, summary judgment would not have been properly awarded to the defendant on the merits.

FISHER, J.P., BALKIN, HALL and AUSTIN, 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