

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

D25540
G/kmg

_____AD3d_____

Argued - November 13, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2009-02308

DECISION & ORDER

Adelina Josen, et al., plaintiffs-respondents, v G & S
Realty 1, LLC, et al., defendants-respondents,
TPD Construction Corp., appellant.

(Index No. 40944/04)

MacCartney, MacCartney, Kerrigan & MacCartney, Nyack, N.Y. (Harold Y.
MacCartney, Jr., of counsel), for appellant.

Michael A. Cervini, Jackson Heights, N.Y. (Robin Mary Heaney of counsel), for
plaintiffs-respondents.

In an action to recover damages for personal injuries, etc., the defendant TPD
Construction Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court,
Kings County (Hurkin-Torres, J.), dated January 22, 2009, as denied its motion for summary
judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Generally, unless a trial court specifies otherwise, a party has 120 days after the filing
of a note of issue to move for summary judgment, after which it may do so only with “leave of court
on good cause shown” (CPLR 3212[a]). This “requires a showing of good cause for the delay in
making the motion—a satisfactory explanation for the untimeliness—rather than simply permitting
meritorious, nonprejudicial filings, however tardy” (*Brill v City of New York*, 2 NY3d 648, 652). A
trial court has discretion in determining whether to consider a motion for summary judgment made
more than 120 days after the filing of a note of issue (*see* CPLR 3212[a]; *Gonzalez v 98 Mag Leasing
Corp.*, 95 NY2d 124, 129).

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Here, the trial court providently exercised its discretion in denying the motion of the defendant TPD Construction Corp. for summary judgment dismissing the complaint and all cross claims insofar as asserted against it because it failed to timely file its motion (*see* CPLR 3212[a]; *Brill v City of New York*, 2 NY3d at 652; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d at 129).

COVELLO, J.P., SANTUCCI, CHAMBERS 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