

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

D26881
W/hu

_____AD3d_____

Argued - March 8, 2010

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2009-00688

DECISION & ORDER

Carmelo Ciccone, appellant, et al., plaintiff, v Kendal
On Hudson, et al., respondents, et al., defendants.

(Index No. 1548/06)

Worby Groner Edelman LLP, White Plains, N.Y. (Richard S. Vecchio of counsel),
for appellant.

Chesney & Murphy, LLP, Baldwin, N.Y. (Peter J. Verdirame of counsel), for
respondents Kendal On Hudson and Andron Construction Corp.

Brody, O'Connor & O'Connor, Northport, N.Y. (Scott A. Brody and Patricia A.
O'Connor of counsel), for defendant Empire Wallboard & Supply Co., Inc.

In an action to recover damages for personal injuries, etc., the plaintiff Carmelo Ciccone appeals from an order of the Supreme Court, Westchester County (Nicolai, J.), entered December 12, 2008, which granted the motion of the defendants Kendal on Hudson and Andron Construction Corp. pursuant to CPLR 2004 to extend the time to serve supplemental responses to the plaintiffs' discovery demands.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in granting the motion of the defendants Kendal on Hudson and Andron Construction Corp. pursuant to CPLR 2004 to extend their time to serve supplemental responses to the plaintiffs' discovery demands (*see City Line Auto Mall, Inc. v Citicorp Leasing, Inc.*, 45 AD3d 716; *see also Tewari v Tsoutsouras*, 75

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NY2d 1). The Supreme Court properly found, inter alia, a lack of prejudice to the plaintiffs and a lack of evidence of a willful or contumacious delay, and providently determined that the public policy favoring the resolution of cases on the merits warranted the granting of the motion under the circumstances of this case (*see City Line Auto Mall, Inc. v Citicorp Leasing, Inc.*, 45 AD3d 716; *see also Tewari v Tsoutsouras*, 75 NY2d 1).

The appellant's remaining contentions are without merit.

MASTRO, J.P., MILLER, AUSTIN and ROMAN, 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