

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

D56943
C/htr

_____AD3d_____

Argued - May 21, 2018

MARK C. DILLON, J.P.
RUTH C. BALKIN
ROBERT J. MILLER
FRANCESCA E. CONNOLLY, JJ.

2017-05645

DECISION & ORDER

Paige Miller, respondent, v James Ball, appellant.

(Index No. 22339/12)

Ann Ball P.C., Commack, NY, for appellant.

Mintzer, Sarowitz, Zeris, Ledva & Meyers LLP, New York, NY (Kevin L. Kelly of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (Diccia T. Pineda-Kirwan, J.), entered April 28, 2017. The order denied the defendant's motion, in effect, for summary judgment on his counterclaims as untimely.

ORDERED that the order is affirmed, with costs.


We agree with the Supreme Court's determination that the defendant's motion, in effect, for summary judgment on his counterclaims was untimely, and that the defendant failed to demonstrate good cause for the delay in making his motion (*see* CPLR 3212[a]; *Brill v City of New York*, 2 NY3d 648, 650; *Perini Corp. v City of New York [Department of Env'tl. Protection]*, 16 AD3d 37, 40).

The defendant's remaining contention is not properly before this Court.

We decline the plaintiff's request to impose a sanction upon the defendant for pursuing an allegedly frivolous appeal (*see* 22 NYCRR 130-1.1[c]).

DILLON, J.P., BALKIN, MILLER and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

October 17, 2018

MILLER v BALL