

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

D23059  
G/kmg

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Submitted - March 18, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL, JJ.

2008-04647

DECISION & ORDER

Lourdes Garcia, appellant,  
v Boris Simonovsky, respondent,  
et al., defendant.

(Index No. 39754/06)

Rossillo & Licata, P.C., Westbury, N.Y. (Joseph J. Licata, Jr., of counsel), for appellant.

Abamont & Associates, Brooklyn, N.Y. (Thomas D. Leff of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Schack, J.), dated April 4, 2008, which granted the motion of the defendant Boris Simonovsky pursuant to CPLR 306-b to dismiss the complaint insofar as asserted against him and denied her cross motion pursuant to CPLR 306-b to extend her time to serve that defendant with the summons and complaint.

ORDERED that the order is affirmed, with costs.

In opposition to the respondent's motion to dismiss the complaint pursuant to CPLR 306-b and in support of the plaintiff's cross motion to extend her time to serve the summons and complaint pursuant to that statute, the plaintiff was required to show either good cause for her failure to serve the respondent with the summons and complaint within 120 days after their filing or that an extension of time to effect service should be granted in the interest of justice (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-107; *Riccio v Ghulam*, 29 AD3d 558, 560). The plaintiff failed to show good cause for her failure since she admittedly made no attempt to serve the respondent within 120 days after the filing of the summons and complaint (*see Leader v Maroney, Ponzini &*

May 5, 2009

GARCIA v SIMONOVSKY

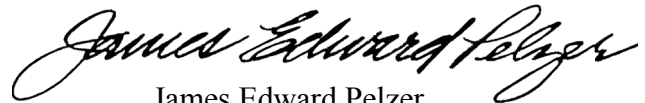
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*Spencer*, 97 NY2d at 105; *Valentin v Zaltsman*, 39 AD3d 852; *Riccio v Ghulam*, 29 AD3d at 560).

Furthermore, the plaintiff failed to show that an extension of time to serve the defendant was warranted in the interest of justice in view of the lack of diligence shown by the plaintiff, including the one-year delay between the time the summons and complaint were filed and the time the cross motion to extend her time to serve the summons and complaint was made, the 9½-month delay between the expiration of the statute of limitations and the respondent's receipt of notice of the action, the failure to make any showing of merit, and the lack of an excuse for the failure to effect timely service (*see Slate v Schiavone Constr. Co.*, 4 NY3d 816, 817; *American Tel. & Tel. Co. v Schnabel Found. Co.*, 38 AD3d 580; *Ortiz v Malik*, 35 AD3d 560, 560-561; *Meusa v BMW Fin. Servs.*, 32 AD3d 830, 831).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and LEVENTHAL, 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