

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. BRUCE D. ALPERT

Justice
TRIAL/IAS, PART 7
NASSAU COUNTY

DOUGLAS ADAMSON and GABRIELLE ADAMSON,

Plaintiffs,

INDEX No. 28591/99

-against-

ERIK S. KATZ, DEENA H. KATZ and HARRIMAN
ESTATES DEVELOPMENT CORP., d/b/a ECKEL
DEVELOPMENT,

Motion Sequence No. 3

Defendants.

ERIK S. KATZ, DEENA H. KATZ and HARRIMAN
ESTATES DEVELOPMENT CORP., d/b/a ECKEL
DEVELOPMENT,

Motion Date: May 29, 2003

Third-Party Plaintiffs,

-against-

X TRAIRE, INC., and AMERICAN STAIR BUILDERS,
INC.,

Third-Party Defendants.

ERIK S. KATZ, DEENA H. KATZ and HARRIMAN
ESTATES DEVELOPMENT CORP., d/b/a ECKEL
DEVELOPMENT,

Second Third-Party Plaintiffs,

-against-

JMD BULLDERS, JOHN DeVITO and JOHN DeVITO
d/b/a JMB BUILDERS,

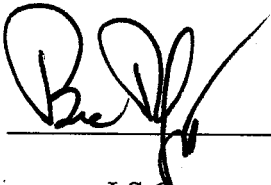
Second Third-Party Defendants.

The following papers read on this application for relief pursuant to CPLR 3212:

Notice of Motion	X
Opposing Papers	XX
Reply Papers	X

Upon the foregoing papers it is ordered that this application by the second third-party defendants for the summary dismissal of the second third-party complaint and all cross-claims asserted against them is denied as untimely. (see, CPLR 3212 [a]) The explanation for the delay, impermissibly proffered for the first time in reply papers at a time when adverse counsel could not respond absent leave of the Court (see, Drake v Drake, 296 AD2d 566; Martin v New York Hospital, 295 AD2d 485; Tobias v Manginelli, 266 AD2d 532; Russo v Automotive Rentals, Inc., 247 AD2d 603), is untenable in light of the action's certification as trial ready.

Dated: August 11, 2003



J.S.C.

ENTERED

AUG 14 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**