

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice

TRIAL/IAS PART 5
NASSAU COUNTY

COTEL CONTRACTING, INC.,

Plaintiff(s),

-against-

MARK GREENE and EVELYN PALTROW,

Defendant(s).

ORIGINAL RETURN DATE: 07/15/08
SUBMISSION DATE: 08/18/08
INDEX No.: 005058/08

MOTION SEQUENCE #1,2

The following papers read on this motion:

Notice of Motion.....	1
Cross-Motion.....	2
Affidavit of Jordan Rosenhaus.....	3
Affirmation of Kimberly B. Grotell.....	4
Affirmation of Alexander Sasha Bau.....	5
Reply.....	6
Plaintiff's Memorandum of Law.....	7
Defendant's Memorandum of Law.....	8

Defendant Mark Greene's ("Greene") motion for an order, pursuant to CPLR 3012(b), dismissing this action as against him with prejudice on the grounds that plaintiff (1) failed to timely serve a complaint and (2) is not entitled to the relief requested, and for costs pursuant to CPLR 8106 and 8202, is denied. Plaintiff's cross-motion for an order, pursuant to CPLR 3012(d), compelling defendant Greene to accept service of its complaint is granted.

Counsel for defendant Greene submits that Greene was served with a summons with notice on or about March 26, 2008. By letter to plaintiff's attorneys dated April 9, 2008, counsel for Greene demanded service of a complaint pursuant to CPLR 3012(b). Plaintiff's time within which to serve the complaint was extended to May 21, 2008. The complaint was not mailed to defendant Greene's counsel until June 3, 2008.

Plaintiff's counsel submits that the reason for the delay was that he incorrectly calendared the day the complaint was to be served. CPLR 2005 provides, as follows: "Upon an application

RE: COTEL CONTRACTING v. GREENE, et al.

Page 3.

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