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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

Hon. Thomas Feinman
Justice

ANDREW BRAUN a/k/a ANDREW L. BRAUN
and VICKY BRAUN a/k/a VICKY LEVIN BRAUN,

Plaintiffs,

- against -

MERRIWEATHER GOOD, LTD. a/k/a
MERRIWEATHER GOOD & ASSOCIATES,
LTD., PARISH MERRIWEATHER and
C M B CONTRACTING, INC. d/b/a MID ISLAND
CONTRACTORS,

Defendants.

TRIAL/IAS PART 22
NASSAU COUNTY

INDEX NO. 2278/05

MOTION SUBMISSION
DATE: 6/7/07

MOTION SEQUENCE
NO. 008

The following papers read on this motion:

Notice of Motion and Affidavits.....	<u>X</u>
Affirmation in Opposition.....	<u>X</u>
Reply Affirmation.....	<u>X</u>

The plaintiffs move for an order pursuant to CPLR §3212 granting summary judgment in their favor. The defendants submit opposition and the plaintiffs submit a reply affirmation.

This action was certified on June 20, 2006. The certification order directed that motion for summary judgment be filed within ninety (90) days of the filing of the note of issue. CPLR §3212(a) authorizes curtailing the time period in which a motion for summary judgment must be made.

Here, the plaintiff served the instant motion for summary judgment more than ninety (90) days after the note of issue was filed, in violation of this Court's order. The untimely motions are not supported by good cause as defendants offer no explanation for the delay. Therefore, this Court cannot entertain the motions.

In *Brill v. City of New York*, 2 NY3d 648, the Court of Appeals reversed an award of summary judgment, and reinstated the plaintiff's complaint on the ground that the movant failed to comply with the statutory requirement that "good cause" be shown for the late filing. The Court held that "[n]o excuse at all, or a perfunctory excuse, cannot be 'good cause'." (*Id.* at 652). Several months later, the Court of Appeals in *Miceli v. State Farm*, 3 NY3d 725, reinforced its interpretation of "good cause" and stated that "statutory time frames - like court-ordered time frames - are not options, they are requirements to be taken seriously by the parties." (*Id.* at 726).

By virtue of the clear intent and unequivocal language in *Brill* and *Miceli*, this Court should not consider prejudice and judicial economy, (*Perini v. City of New York*, 2005 WL 250861), and in the absence of a "good cause" showing, this Court has no discretion to entertain even a meritorious, non-prejudicial motion for summary judgment. (*Thompson v. New York City Board of Education*, 10 AD3d 650, citing *Brill v. City of New York*, 2 NY3d 648). A "good cause" showing in CPLR §3212(a) requires a showing of good cause for the delay in making the motion, however tardy, whereby no excuse at all, or a perfunctory excuse cannot be "good cause". (*Gonzalez v. Zam Apartment Corp.*, 11 AD3d 657 citing *Brill*).

Accordingly, pursuant to CPLR §3212(a), there being no showing of "good cause", the motions seeking summary judgment are denied as untimely made.

Furthermore, issues of fact concerning the performance by the plaintiffs and the defendants with respect to the purported breach of contract exist warranting the denial of this motion for summary judgment.

ENTER:

J.S.C.

Dated: August 1, 2007

cc: David J. Gold, P.C.
Robert M. Blakeman & Associates
Montfort, Healy, McGuire & Salley, Esqs.
Eliot F. Bloom, Esq.

ENTERED
AUG 03 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE