

Rial v. Lee  
N.Y.A.D. 2 Dept. 2006.

Op. 04822

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Supreme Court, Appellate Division, Second Department,  
New York.

Manuel RIAL, et al., respondents,

v.

Larry LEE, et al., appellants.

June 13, 2006.

**Gold, Stewart**, Kravatz & Stone, LLP, Westbury, N.Y. ([Jeffrey B. Gold](#) of counsel), and Dubow & Smith, Bronx, N.Y., for appellants (one brief filed).

Robert G. Schacht, PLLC, Staten Island, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated November 9, 2005, as granted the plaintiffs' motion for leave to file a late demand for a jury trial.

ORDERED that the order is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, and the motion is denied.

The plaintiffs failed to demonstrate that their affirmative request in their note of issue for a “[t]rial without jury” was inadvertent or the result of clerical error. Accordingly, the Supreme Court improvidently exercised its discretion in granting the motion for leave to file a late demand for a trial by jury (*see* [CPLR 4102\[a\],\[e\]](#); \*[358Hyatte v. G.B.W. Glenwood Dental Adm'rs](#), 8 A.D.3d 233, 777 N.Y.S.2d 686; [Skelly v. Sachem Cent. School Dist.](#), 309 A.D.2d 917, 918, 766 N.Y.S.2d 108; [Behrmann v. Heinz Pet Prods.](#), 215 A.D.2d 619, 628 N.Y.S.2d 509; *cf.* [Breezy Point Coop. v. Young](#), 234 A.D.2d 410, 651 N.Y.S.2d 896).

[SCHMIDT](#), J.P., [CRANE](#), [KRAUSMAN](#), [SKELOS](#)  
and [LUNN](#), JJ., concur.

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30 A.D.3d 499, 816 N.Y.S.2d 357, 2006 N.Y. Slip