

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

D12601
E/mv

_____AD3d_____

Submitted - September 27, 2006

THOMAS A. ADAMS, J.P.
GABRIEL M. KRAUSMAN
REINALDO E. RIVERA
ROBERT A. LIFSON, JJ.

2005-07828
2006-04447

DECISION & ORDER

Monet Dunham, appellant, v
City of New York, et al., respondents.

(Index No. 31535/93)

Charles Berkman, Brooklyn, N.Y. (Thomas Torto and Jason Levine of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Susan B. Eisner of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Hurkin-Torres, J.), dated July 1, 2005, which denied her motion to vacate the dismissal of the action for failure to proceed to trial and to restore the case to the trial calendar and (2) an order of the same court dated September 27, 2005, which denied her motion for leave to reargue and renew the prior motion.

ORDERED that the order dated July 1, 2005, is reversed, on the law and in the exercise of discretion, without costs or disbursements, and the motion to vacate the dismissal of the action and to restore the case to the trial calendar is granted; and it is further,

ORDERED that the appeal from the order dated September 27, 2005, is dismissed, without costs or disbursements.

November 14, 2006

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On January 25, 2005, the Supreme Court dismissed this action but gave the plaintiff leave to move to restore it upon a showing of a meritorious cause of action and a reasonable excuse for failure to proceed with trial on the date selected by the court. As the plaintiff's proof adequately addressed both predicates to the relief sought, the Supreme Court should have granted the plaintiff's motion to vacate the dismissal and to restore the case to the trial calendar (*see Matter of Zrake v New York City Dept. of Educ.*, 17 AD3d 603; *Cardinale v Woolworth's, Inc.*, 304 AD2d 351).

The appeal from so much of the order dated September 27, 2005, as denied leave to reargue must be dismissed as no appeal lies from an order denying reargument. The appeal from so much of the order dated September 27, 2005, as denied leave to renew has been rendered academic in light of our determination on the appeal from the order dated July 1, 2005.

ADAMS, J.P., KRAUSMAN, RIVERA and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court