

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

D12979
E/mv

_____AD3d_____

Argued - October 24, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ROBERT J. LUNN, JJ.

2006-03146

DECISION & ORDER

Castalia Ortega, et al., appellants,
v City of New York, respondent.

(Index No. 22913/04)

Trief & Olk, New York, N.Y. (Barbara E. Olk of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Ronald E. Sternberg
and Scott Shorr of counsel), for respondent.

In an action, inter alia, to recover damages for spoliation of evidence, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated February 16, 2006, as denied that branch of their motion which was for summary judgment on the issue of liability on the cause of action to recover damages for spoliation, and searched the record and awarded summary judgment to the defendant dismissing that cause of action insofar as asserted by the plaintiff Castalia Ortega.

ORDERED that the order is affirmed insofar as appealed from, with costs, and, upon searching the record, summary judgment is awarded to the defendant dismissing the cause of action to recover damages for spoliation of evidence insofar as asserted by the plaintiff Manuel Peralta.

We reject the plaintiffs' contention that they have a cause of action to recover damages for spoliation of evidence (*see MetLife Auto & Home v Basil Chevrolet*, 1 NY3d 478, *affg* 303 AD2d 30; *Carella v Reilly & Assoc.*, 22 AD3d 623). Thus, the Supreme Court properly denied that branch of the plaintiffs' motion which was for summary judgment on the issue of liability on that

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cause of action, and searched the record and awarded summary judgment to the defendant dismissing that cause of action insofar as asserted by the plaintiff Castalia Ortega. Moreover, we exercise our authority to search the record and award summary judgment to the defendant dismissing the cause of action to recover damages for spoliation of evidence insofar as asserted by the plaintiff Manuel Peralta (*see* CPLR 3212[b]; *Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 31 AD3d 418).

MILLER, J.P., RITTER, SANTUCCI and LUNN, JJ., concur.

ENTER:


James Edward Helges
Clerk of the Court