

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

D13043  
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Submitted - September 18, 2006

DAVID S. RITTER, J.P.  
GLORIA GOLDSTEIN  
REINALDO E. RIVERA  
ROBERT A. SPOLZINO, JJ.

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2005-05430  
2005-05432  
2005-10538

DECISION & ORDER

John Nieves, Jr., appellant, v City of New York,  
respondent, et al., defendant; Slattery Associates, Inc.,  
nonparty-defendant.

(Index No. 49135/98)

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Brand Brand Nomberg & Rosenbaum, LLP, New York, N.Y. (Brett J. Nomberg of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F. X. Hart, Gardner Miller, and Marta Ross of counsel), for respondent City of New York.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from (1) so much of an order of the Supreme Court, Kings County (Solomon, J.) dated November 3, 2004, as denied that branch of his motion pursuant to CPLR 3126 which was to strike the answer of the defendant City of New York for failing to comply with five orders directing discovery compliance, (2) so much of an order of the same court dated May 11, 2005, as denied that branch of his motion which was to strike the answer of the defendant City of New York for failing to comply with an additional order directing discovery compliance, and (3) so much of an order of the same court dated October 19, 2005, as denied that branch of his motion which was to compel discovery.

ORDERED that the orders are affirmed insofar as appealed from, with costs.

December 12, 2006

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The drastic remedy of striking a pleading is inappropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious (*see Jenkins v City of New York*, 13 AD3d 342; *Simpson v City of New York*, 10 AD3d 601, 603; *DeCavallas v Pappantoniou*, 300 AD2d 617, 618; *Mohammed v 919 Park Place Owners Corp.*, 245 AD2d 351, 352). The Supreme Court is vested with broad discretion in supervising disclosure, and its determination will not be disturbed absent an improvident exercise of that discretion (*see Jenkins v City of New York*, *supra* at 342; *Riley v ISS Intl. Serv. Sys.*, 304 AD2d 637; *DeCavallas v Pappantoniou*, *supra*; *Patterson v Greater N.Y. Corp. of Seventh Day Adventists*, 284 AD2d 382, 383). Here, the Supreme Court providently exercised its discretion in denying those branches of the plaintiff's motions which were to strike the answer of the defendant City of New York since there was no clear showing that the City's conduct, including its late disclosure of certain arterial highway maintenance records, was willful and contumacious (*see Mawson v Historic Properties, LLC*, 30 AD3d 480; *Lombardo v St. Francis Hosp. Rehabilitation Servs.*, 16 AD3d 385, 386; *Carella v Reilly & Assocs.*, 297 AD2d 326, 327).

The plaintiff's remaining contentions either are unpreserved for appellate review or without merit.

RITTER, J.P., GOLDSTEIN, RIVERA and SPOLZINO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court