

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

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_____AD3d_____

Argued - November 6, 2006

GLORIA GOLDSTEIN, J.P.
PETER B. SKELOS
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-04536
2005-11419

DECISION & ORDER

Jennifer Rucker, appellant, v Nader J. Sayegh, etc.,
et al., respondents.

(Index Nos. 10478/02, 10479/02)

Fred Enrich, P.C., New York, N.Y. (Theodore P. Kaplan of counsel), for appellant.

Ohrenstein & Brown, LLP, New York, N.Y. (Matthew Kogan and Christopher Hitchcock of counsel), for respondents.

In an action, inter alia, to recover damages for legal malpractice, the plaintiff appeals (1) from stated portions of an order of the Supreme Court, Westchester County (La Cava, J.), entered April 1, 2005, which, among other things, denied that branch of her cross motion which was for leave to serve and file a second amended complaint adding a claim for punitive damages, and (2) from so much of an order of the same court entered November 17, 2005, as denied her motion for leave to renew that branch of her cross motion which was for leave to serve and file a second amended complaint adding a claim for punitive damages.

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

The Supreme Court providently exercised its discretion in denying that branch of the plaintiff's cross motion which was for leave to serve and file a second amended complaint adding a claim for punitive damages (*see* CPLR 3025[b]; *Lavanant v General Acc. Ins. Co. of Am.*, 212 AD2d 450; *Mills v Pappas*, 174 AD2d 780; *Brown v Samalin & Bock*, 155 AD2d 407; *see also Cary v Fisher*, 101 AD2d 924).

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Further, the Supreme Court properly denied that branch of the plaintiff's motion which was for leave to renew where the plaintiff failed to proffer any "new" facts which were not submitted on the prior cross motion for leave to serve and file a second amended complaint adding a claim for punitive damages (*see Simpson v Cook Pony Farm Real Estate*, 12 AD3d 496; *Medina v New York City Health & Hosps. Corp.*, 22 AD3d 814, 815; *Lawson v Aspen Ford*, 15 AD3d 628).

The plaintiff's remaining contentions are without merit.

GOLDSTEIN, J.P., SKELOS, LUNN and COVELLO, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court