

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

D16327
X/kmg

_____AD3d_____

Submitted - September 5, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2007-01166

DECISION & ORDER

Richard Cespuglio, et al., appellants-respondents,
v SA Brothers Taxi Corp., et al.,
respondents-appellants.

(Index No. 30877/05)

Rimland & Associates, Brooklyn, N.Y. (Anthony M. Grisanti of counsel), for appellants-respondents.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for respondents-appellants.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from stated portions of an order of the Supreme Court, Kings County (Ruditzky, J.), dated January 5, 2007, which, inter alia, granted that branch of the defendants' motion which was to compel them to appear for independent medical examinations and to execute certain authorizations pursuant to the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d, *et seq.*), and the defendants cross-appeal from so much of the same order as, in effect, denied that branch of their motion pursuant to CPLR 3126 which was to preclude the plaintiffs from offering any evidence at trial.

ORDERED that the order is affirmed, without costs or disbursements.

The defendants waived their right to conduct physical examinations of the plaintiffs by failing to designate the physician to conduct such examinations by August 21, 2006, the date set forth in the preliminary compliance conference order. However, under the circumstances of this case

October 9, 2007

Page 1.

CESPUGLIO v SA BROTHERS TAXI CORP.

and absent a showing of prejudice to the plaintiffs, the court properly relieved the defendants of their waiver (*see Blamer v Singh*, 20 AD3d 440; *Poltorak v Blyakham*, 225 AD2d 600; *Williams v Long Is. Coll. Hosp.*, 147 AD2d 558; *Kanterman v Palmiotti*, 122 AD2d 116), and providently exercised its discretion in granting that branch of the defendants' motion which was to compel the plaintiffs to appear for physical examinations and to execute certain authorizations pursuant to the Health Insurance Portability Act of 1996 (42 USC § 1320d, *et seq.*).

The parties' remaining contentions are without merit.

SANTUCCI, J.P., GOLDSTEIN, DILLON and ANGIOLILLO, JJ., concur.

2007-01166

DECISION & ORDER ON MOTION

Richard Cespuglio, et al., appellants-respondents,
v SA Brothers Taxi Corp., et al.,
respondents-appellants.

(Index No. 30877/05)

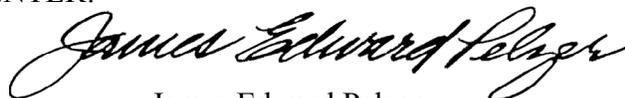
Motion by the appellants-respondents on an appeal and cross appeal from an order of the Supreme Court, Kings County, dated January 5, 2007, to dismiss the cross appeal on the ground that the respondents-appellants are not aggrieved by the order.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

SANTUCCI, J.P., GOLDSTEIN, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court