

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

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_____AD3d_____

Argued - October 2, 2007

ROBERT W. SCHMIDT, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-05849

DECISION & ORDER

Julieta Gurgenedze, appellant, v Giuseppa Vitale, et al., respondents.

(Index No. 14705/03)

Silverman Sclar Shin & Byrne, PLLC, New York, N.Y. (Vincent Chirico and Jordan Hiller of counsel), for appellant.

Leahey & Johnson, P.C., New York, N.Y. (Peter James Johnson, Jr., of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Bayne, J.), entered May 17, 2006, which, upon a jury verdict on the issue of liability, is in favor of the defendants and against her dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contention, the trial court was not prejudiced against her case or her counsel (*cf. Pickering v Lehrer, McGovern, Bovis, Inc.*, 25 AD3d 677; *Vazquez v Costco Cos., Inc.*, 17 AD3d 350; *Matter of Travelers Indem. Co. v Mohammed*, 14 AD3d 710; *Ougourlian v New York City Health & Hosps. Corp.*, 5 AD3d 644; *Testa v Federated Dept. Stores, Abraham & Straus Div.*, 118 AD2d 696). Additionally, the trial court providently exercised its discretion in precluding the plaintiff from presenting the testimony of certain proposed witnesses. The plaintiff failed to demonstrate that the proposed police witness would give relevant and necessary admissible evidence (*see Burich v Pomerantz*, 41 AD3d 632; *Pitts v Empire Elec. Contrs., Inc.*, 22 AD3d 734; *Clarke v Nadel*, 50 AD2d 851). The trial court properly excluded the proposed rebuttal witnesses

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since the plaintiff's offer of proof showed that the testimony would have concerned collateral matters not probative of the issue in question (*see Feldsberg v Nitschke*, 49 NY2d 636; *Matter of Driscoll*, 266 AD2d 288; *Coopersmith v Gold*, 223 AD2d 572, *aff'd* 89 NY2d 957; *Hutchinson v Shaheen*, 55 AD2d 833).

The plaintiff's remaining contention is unpreserved for appellate review.

SCHMIDT, J.P., FISHER, LIFSON and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court