

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

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_____AD3d_____

Argued - December 21, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2006-11294

DECISION & ORDER

Lilian Ferro, a/k/a Lilian Tapia, etc., et al.,
respondents, v Andy M. Lee, etc., appellant.

(Index No. 6402/03)

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (Barbara A. Dalton of counsel), for
appellant.

Brown & Guilbert, New York, N.Y. (James E. Gear and Raymond A. Raskin of
counsel), for respondents.

In an action to recover damages for medical malpractice and wrongful death, etc., the
defendant appeals from an order of the Supreme Court, Kings County (Steinhardt, J.), dated
November 2, 2006, which denied his motion to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

A trial court has broad discretion in supervising discovery (*see generally Vasile v Chisena*, 272 AD2d 610). Here, since the defendant did not establish willful noncompliance with CPLR 3101(d) on the plaintiffs' part, the Supreme Court providently exercised its discretion in permitting the plaintiffs to obtain a new expert and adjourning the trial in this matter (*see Hernandez-Vega v Zwanger-Pesiri Radiology Group*, 39 AD3d 710; *Shopsin v Siben & Siben*, 289 AD2d 220; *cf. Gayz v Kirby*, 41 AD3d 782). Further, contrary to the defendant's contention, the court properly concluded that dismissal based on the plaintiff's alleged noncompliance with CPLR 3012-a was not warranted (*see Casiano v New York Hospital-Cornell Med. Center*, 169 AD2d 806).

Accordingly, the Supreme Court properly denied the defendant's motion to dismiss the complaint.

MASTRO, J.P., SANTUCCI, BALKIN and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court