

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

D18357
C/prt

_____AD3d_____

Submitted - January 24, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-07522

DECISION & ORDER

Jeanne Schimicci, appellant, v Dermopath, Inc., et al.,
respondents (and a third-party action).

(Index No. 9826/99)

Slater & Sgarlato, P.C., Staten Island, N.Y. (Robert A. Sgarlato and Thomas J. Cappello of counsel), for appellant.

Garrity, Graham, Murphy, Garofalo & Flinn, P.C., New York, N.Y. (Anthony J. Marino of counsel), for respondents.

In an action, inter alia, to recover damages for personal injuries, etc., the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Bunyan, J.), dated May 23, 2006, as granted that branch of the defendants' cross motion which was pursuant to CPLR 3126 to strike the complaint on the ground of spoliation of evidence.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the plaintiff's contention, the Supreme Court providently exercised its discretion in granting that branch of the defendants' cross motion which was pursuant to CPLR 3126 to strike the complaint on the ground of spoliation of evidence based on the plaintiff's negligent failure to preserve key pieces of evidence which, in light of the nature of the claims asserted, were crucial to the defense of this matter (*see Lichtenstein v Fantastic Mdse. Corp.*, 46 AD3d 762; *Horace Mann Ins. Co. v E.T. Appliances*, 290 AD2d 418; *Behrbom v Healthco Intl.*, 285 AD2d 573; *Squitieri v City of New York*, 248 AD2d 201).

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The plaintiff's remaining contentions are without merit.

SKELOS, J.P., FISHER, DILLON and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court