

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

D18943
C/hu

_____AD3d_____

Submitted - March 26, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-05343
2007-09696

DECISION & ORDER

Lenny Novikov, etc., appellants, v Maimonides
Medical Center, respondent, et al., defendant.

(Index No. 3787/05)

Weinstein Chase Messinger & Peters, P.C., Brooklyn, N.Y. (Maurice Chayt of
counsel), for appellants.

Wenick & Finger, P.C., New York, N.Y. (Robert E. Fein and Frank J. Wenick of
counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal (1)
from an order of the Supreme Court, Kings County (Steinhardt, J.), dated February 27, 2007, which
denied their motion pursuant to CPLR 3126 to strike the answer and amended answer of the
defendant Maimonides Medical Center for failure to provide certain disclosure and (2), as limited by
their brief, from so much of an order of the same court dated September 28, 2007, as denied that
branch of their motion which was for leave to renew their prior motion.

ORDERED that the order dated February 27, 2007, is affirmed; and it is further,

ORDERED that the order dated September 28, 2007, is affirmed insofar as appealed
from; and it is further,

April 22, 2008

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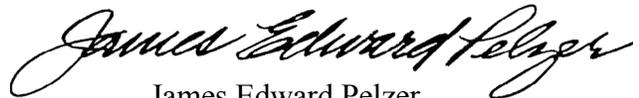
ORDERED that one bill of costs is awarded to the defendant Maimonides Medical Center.

The drastic remedy of striking a pleading is inappropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious (*see* CPLR 3126[3]; *Joe DeMartino Mason Contrs. & Sons, Inc. v Main Plaza Realty Co.*, 44 AD3d 716, 716-717; *Gateway Tit. & Abstract, Inc. v Your Home Funding, Inc.*, 40 AD3d 919; *Nieves v City of New York*, 35 AD3d 557, 558; *Faulkner v City of New York*, 32 AD3d 452; *Kuzmin v Visiting Nurse Serv. of N.Y.*, 22 AD3d 643, 643-644; *Cestaro v Chin*, 20 AD3d 500, 501-502). On the record presented, the Supreme Court providently exercised its discretion in denying the plaintiffs' motion pursuant to CPLR 3126 to strike the answer and amended answer of the defendant Maimonides Medical Center (hereinafter Maimonides) as they did not establish that Maimonides willfully and contumaciously failed to comply with discovery orders or demands, or delayed the progress of discovery.

The plaintiffs' remaining contentions are without merit.

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court