

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

D21646  
C/kmg

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Argued - November 3, 2008

DAVID S. RITTER, J.P.  
ANITA R. FLORIO  
HOWARD MILLER  
MARK C. DILLON, JJ.

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2007-00777

DECISION & ORDER

Aimee J. Fitzgerald, etc., appellant,  
v William Conroy, et al., respondents.

(Index No. 2455/01)

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Aimee J. Fitzgerald, Central Valley, N.Y., appellant pro se.

Kornfield, Rew, Newman & Simeone, Suffern, N.Y. (Maurice J. Recchia of counsel),  
for respondents.

In an action, inter alia, to recover damages for trespass, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Orange County (McGuirk, J.), dated December 6, 2006, as denied her motion for leave to serve an amended complaint.

ORDERED that the order is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, and the plaintiff's motion for leave to serve an amended complaint is granted.

Balancing all relevant factors, and under the circumstances of this case, we find that the Supreme Court improvidently exercised its discretion in denying the plaintiff's motion for leave to serve an amended complaint (*see* CPLR 3025[b], 105[u]; *Thomsen v Suffolk County Police Dept.*, 50 AD3d 1015, 1016-1017; *Dialcom, LLC v AT&T Corp.*, 50 AD3d 727).

RITTER, J.P., FLORIO, MILLER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 30, 2008

FITZGERALD v CONROY