

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

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_____AD3d_____

Submitted - October 7, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-03237

DECISION & ORDER

Luz Rosario, respondent, v BNS Buildings, LLC,
et al., appellants.

(Index No. 13365/07)

Dwyer & Brennan, New York, N.Y. (Kevin J. Brennan of counsel), for appellants.

Wingate, Russotti & Shapiro, LLP, Dix Hills, N.Y. (Kenneth J. Halperin and David M. Schwarz, New York, N.Y., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Agate, J.), entered March 27, 2009, as denied that branch of their motion which was to compel the plaintiff to submit to certain medical testing.

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

Under the circumstances, where, inter alia, the plaintiff established that the proposed medical testing was potentially dangerous (*cf. Lefkowitz v Nassau County Med. Ctr.*, 94 AD2d 18, 21), the Supreme Court properly denied that branch of the defendants' motion which was to compel her to submit to the proposed testing (*see Santero v Kotwal*, 4 AD3d 464, 465; *Bobka v Mann*, 308 AD2d 497, 498; *Marino v Pena*, 211 AD2d 668, 668-669).

SKELOS, J.P., COVELLO, SANTUCCI, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 24, 2009

ROSARIO v BNS BUILDINGS, LLC