

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

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_____AD3d_____

Submitted - November 18, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-04330

DECISION & ORDER

Joan Maraviglia, et al., respondents, v Irina
Lokshina, et al., appellants.

(Index No. 6892/05)

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (Shawn P. Kelly and Susan M. Ulrich of
counsel), for appellants.

John L. Juliano, P.C., East Northport, N.Y., for respondents.

In an action to recover damages for medical malpractice, etc., the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Whelan, J.), dated April 17, 2009, as denied that branch of their motion which was to strike certain portions of the plaintiffs' fourth supplemental bill of particulars.

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

The Supreme Court properly denied that branch of the defendants' motion which was to strike certain portions of the plaintiffs' fourth supplemental bill of particulars, including the particulars of certain injuries, surgeries, and hospitalizations. Pursuant to CPLR 3043(b), a plaintiff may serve a supplemental bill of particulars containing "continuing special damages and disabilities" without leave of the court if it alleges "no new cause of action . . . or new injury." Where, as here, the plaintiffs seek to allege continuing consequences of the injuries suffered and described in previous bills of particulars, rather than new and unrelated injuries, the bill of particulars is a supplemental bill of particulars (*see Tate v Colabello*, 58 NY2d 84, 87; *Shahid v New York City Health & Hosps.*

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Corp., 47 AD3d 798, 800; *Ray v Alpha Omega Dev. Co.*, 287 AD2d 446; *Pauling v Glickman*, 232 AD2d 465, 466), rather than an amended or new bill of particulars. Furthermore, the fourth supplemental bill of particulars was served more than 30 days prior to the rescheduled date of trial, and there was no showing of prejudice to the defendants (*see Fortunato v Personal Woman's Care, P.C.*, 31 AD3d 370, 371).

DILLON, J.P., MILLER, ENG, HALL and SGROI, 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