

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

D25578
C/prt

_____AD3d_____

Submitted - December 2, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-03805

DECISION & ORDER

Jeffrey Gaskin, appellant, v
Chaim Ilowitz, respondent.

(Index No. 19615/08)

Robert C. Fontanelli, P.C., Brooklyn, N.Y., for appellant.

Andrew Citron, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from so much of an order of the Supreme Court, Kings County (Bunyan, J.), dated March 25, 2009, as granted that branch of the defendant's motion which was to vacate the note of issue.

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

The plaintiff's certificate of readiness incorrectly stated that the bill of particulars, physical examinations, exchange of medical reports, and any discovery proceedings known to be necessary were waived. In addition, it falsely declared that preliminary proceedings had been completed and that the case was ready for trial. Because of these misstatements of material facts, that branch of the defendant's motion which was to vacate the note of issue was properly granted (*Brown v Astoria Fed. Sav.*, 51 AD3d 961, 962; *see* 22 NYCRR 202.21[e]; *Gregory v Ford Motor Credit Co.*, 298 AD2d 496, 497; *Spilky v TRW, Inc.*, 225 AD2d 539, 540).

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

January 5, 2010

GASKIN v ILOWITZ