

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

D26539
W/prt

_____AD3d_____

Submitted - March 3, 2010

MARK C. DILLON, J.P.
HOWARD MILLER
RUTH C. BALKIN
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2009-10120

DECISION & ORDER

Joseph M. Torres, Jr., appellant, v Saint Vincents
Catholic Medical Centers, et al., respondents.

(Index No. 8872/07)

Everett J. Petersson, P.C., Brooklyn, N.Y., for appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Siegal, J.), entered September 30, 2009, which granted that branch of the defendants' motion which was to strike the action from the trial calendar and to vacate the note of issue and certificate of readiness.

ORDERED that the order is affirmed, with costs.

A motion to vacate the note of issue and certificate of readiness made more than 20 days after their filing will be granted only where "a material fact in the certificate of readiness is incorrect" or upon "good cause shown" (22 NYCRR 202.21[e]; *see Ferraro v North Babylon Union Free School Dist.*, 69 AD3d 559, 560). To satisfy the requirement of "good cause," the party seeking vacatur must "demonstrate that unusual or unanticipated circumstances developed subsequent to the filing of the note of issue and certificate of readiness requiring additional pretrial proceedings to prevent substantial prejudice" (*Utica Mut. Ins. Co. v P.M.A. Corp.*, 34 AD3d 793, 794; *see Ferraro v North Babylon Union Free School Dist.*, 69 AD3d 559; *White v Mazella-White*, 60 AD3d 1047,

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1049; *Audiovox Corp. v Benyamini*, 265 AD2d 135, 139-140). Under the circumstances presented, the Supreme Court providently exercised its discretion in concluding that this standard was met, and in granting that branch of the defendants' motion which was to strike the action from the trial calendar and to vacate the note of issue and certificate of readiness, in effect, to permit the defendants to conduct independent medical examinations of the plaintiff (see *Congregation Yetev Lev D'Satmar, Inc. v 26 Adar N.B. Corp.*, 32 AD3d 376).

DILLON, J.P., MILLER, BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court