

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

D26876  
Y/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 24, 2010

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2009-07838  
2009-09081

DECISION & ORDER

Renato Bernal, respondent, v Paraminder Singh, et al.,  
appellants.

(Index No. 018477/03)

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Cheven, Keely & Hatzis, New York, N.Y. (Mayu Miyashita of counsel), for  
appellants.

In an action to recover damages for personal injuries, the defendants appeal from (1) an order of the Supreme Court, Nassau County (Palmieri, J.), entered July 21, 2009, which granted the plaintiff's motion pursuant to CPLR 3126 to strike their answer and for leave to enter a judgment on the issue of liability upon their failure to appear for examinations before trial, and (2) an order of the same court entered September 4, 2009, which denied their motion for leave to renew and reargue their opposition to the plaintiff's motion.

ORDERED that the appeal from so much of the order entered September 4, 2009, as denied that branch of the defendants' motion which was for leave to reargue is dismissed, without costs or disbursements, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order entered July 21, 2009, is affirmed, without costs or disbursements; and it is further,

ORDERED that the order entered September 4, 2009, is affirmed insofar as reviewed, without costs or disbursements.

April 13, 2010

BERNAL v SINGH

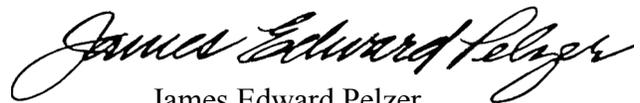
Page 1.

It is settled that the nature and degree of the penalty to be imposed pursuant to CPLR 3126 lies within the sound discretion of the Supreme Court (*see* CPLR 3126[3]; *Joseph v Iannace*, 6 AD3d 502, 503; *Ordonez v Guerra*, 295 AD2d 325, 326; *Yona v Beth Israel Med. Ctr.*, 285 AD2d 460, 461). The record herein supports the Supreme Court's determination that the defendants' failure to appear for depositions on June 5, 2009, was willful and contumacious (*see Beneficial Mortg. Corp. v Lawrence*, 5 AD3d 339, 340; *Rowell v Joyce*, 10 AD3d 601). The attorneys for both sides had agreed upon that date at a compliance conference on June 1, 2009, just four days earlier, and the resulting compliance conference order had directed the depositions to proceed on that date starting at 10:00 A.M. in the courthouse.

The defendants' remaining contentions are without merit.

FISHER, J.P., COVELLO, BALKIN, LEVENTHAL and LOTT, 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