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

D29313
G/kmb

_____AD3d_____ Submitted - November 12, 2010

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-08082 DECISION & ORDER

Carol Whylie, appellant, v Con Edison, Inc.,
et al., respondents, et al., defendant.

(Index No. 6315/03)

Carol Whylie, Brooklyn, N.Y., appellant pro se.

Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains, N.Y. (Melissa A. Murphy-Petros, Richard J. Mermelstein, and Juliann Safko O'Meara of counsel), for respondent Con Edison, Inc.

Cartafalsa, Slattery, Turpin & Lenoff, New York, N.Y. (Gail P. Pariser of counsel), for respondent Bendiner & Schlesinger, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Lewis, J.), dated November 7, 2008, as granted the motion of the defendant Con Edison, Inc., and that branch of the separate motion of the defendant Bendiner & Schlesinger, Inc., which were for summary judgment dismissing the complaint insofar as asserted against each of them.

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

The respondents established their entitlement to judgment as a matter of law on the issue of whether they caused the plaintiff's injuries. They demonstrated through the affirmations of two medical experts, the plaintiff's medical records, and the material safety data sheet, that the plaintiff's brief exposure to X ray processing material did not cause her illness and symptoms (*see*

Alvarez v Prospect Hosp., 68 NY2d 320). In opposition, the plaintiff failed to raise a triable issue of fact. She offered no expert evidence showing that her medical condition and symptoms were caused by the alleged toxic chemical exposure (*see Parker v Mobil Oil Corp.*, 7 NY3d 434, 448). Accordingly, the Supreme Court correctly awarded the respondents summary judgment dismissing the complaint insofar as asserted against each of them.

MASTRO, J.P., DILLON, ENG and CHAMBERS, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court