

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

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_____AD3d_____

Submitted - December 15, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2010-02060

DECISION & ORDER

Joyce Pickett, et al., respondents, v Federated
Department Stores, Inc., etc., appellant.

(Index No. 12801/99)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (John Sandercock and Harry Steinberg of counsel), for appellant.

Berkman Law Office, LLC, Brooklyn, N.Y. (Daniel Shimko of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 6, 2010, which granted the plaintiffs' motion to vacate the dismissal of the complaint and to restore the action to active status.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, with costs, and the plaintiffs' motion to vacate the dismissal of the complaint and to restore the action to active status is denied.

The complaint in this action was dismissed on or about July 6, 2001, after the plaintiffs failed to comply with an order directing them to file a note of issue by June 25, 2001. The plaintiffs' motion to vacate the dismissal of the complaint and to restore the action to active status was made almost eight years after the complaint was dismissed, and almost 11 years after the subject accident. In light of the inexcusable delay of nearly eight years in moving to vacate the dismissal of the

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complaint and the prejudice to the defendant caused by the delay, the plaintiffs' motion should have been denied pursuant to the doctrine of laches (*see Rosenstrauss v Women's Imaging Ctr. of Orange County*, 56 AD3d 454, 454-455; *Lewis v New York City Tr. Auth.*, 38 AD3d 201).

In light of our determination, we need not address the defendant's remaining contention.

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court