

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

D30100
O/prt

_____AD3d_____

Submitted - January 31, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-00379

DECISION & ORDER

Carmen Encarnacion, plaintiff, v
Philip Monier, et al., defendants.
(Action No. 1)

Carmen Encarnacion, respondent,
v Ballancs Restim, appellant.
(Action No. 2)

(Index Nos. 102977/08, 101848/07)

Smith & Newman, LLP, New York, N.Y. (Kristine Gorka of counsel), for appellant.

Bergman, Bergman, Goldberg & Lamonsoff, LLP, Mineola, N.Y. (Allen Goldberg
of counsel), for respondent.

In two related actions, inter alia, to recover damages for personal injuries, which were joined for trial, the defendant in Action No. 2 appeals, as limited by his brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated July 14, 2009, as, in effect, granted that branch of his motion which was to vacate the note of issue filed in Action No. 2 only to the extent of directing the plaintiff to provide all outstanding discovery by a date certain.

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

Under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in declining to vacate the note of issue, since it directed the plaintiff to produce

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all outstanding discovery by a date certain (*see Rampersant v Nationwide Mut. Fire Ins. Co.*, 71 AD3d 972, 973; *Joseph v Propst*, 306 AD2d 246; *see also Ronel-Bennett, Inc. v Consolidated Edison Co. of N.Y.*, 149 AD2d 678, 678-679).

The parties' remaining contentions either refer to matter dehors the record or are not properly before this Court.

COVELLO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court