

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

D32619
H/kmb

_____AD3d_____

Submitted - October 5, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-03333

DECISION & ORDER

Irene Narissi, plaintiff, Teresa Rossiello, respondent,
v Wajid Hussain, et al., appellants, et al., defendants.

(Index No. 37436/06)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of
counsel), for appellants.

Ira M. Scharaga (Berson & Budashewitz, LLP, New York, N.Y. [Elliot
Budashewitz], of counsel), for respondent.

In a consolidated action to recover damages for personal injuries, the defendants Wajid Hussain and Muhammad Hussain appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (F. Rivera, J.), dated January 7, 2011, as denied that branch of their motion which was to strike the action from the trial calendar.

ORDERED that the order is modified, on the law and in the exercise of discretion, by adding thereto a provision extending the time within which discovery must be completed until February 21, 2011; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements, and the time to complete discovery is extended until 45 days after service upon the appellants of a copy of this decision and order.

While the Supreme Court did not improvidently exercise its discretion in denying that branch of the appellants' motion which was to strike the action from the trial calendar, the record reveals that the appellants did not have a sufficient opportunity to conduct a supplemental independent medical examination of the plaintiff Teresa Rossiello after she underwent a second right

knee arthroscopy and that the certificate of readiness contained material misstatements of fact (cf. *Mateo v City of New York*, 282 AD2d 313; *Matter of Long Is. Light. Co. v Assessor of Town of Brookhaven*, 122 AD2d 794; *Easley v Van Dyke*, 110 AD2d 967). Accordingly, under the particular circumstances of this case, the appellants should have been afforded an additional 45 days within which to complete discovery (see *Joseph v Propst*, 306 AD2d 246; *Ronel-Bennett, Inc. v Consolidated Edison Co. of N.Y.*, 149 AD2d 678).

MASTRO, J.P., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court