

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

D32711  
G/ct

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

Submitted - October 11, 2011

WILLIAM F. MASTRO, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
L. PRISCILLA HALL, JJ.

2010-11347

DECISION & ORDER

James Weber, etc., plaintiff, v Elias Purow, etc., et al.,  
respondents, Raoul D. Rudelli, etc., et al., appellants,  
et al., defendants.

(Index No. 103806/06)

Savona, D’Erasmus & Hyer LLC, New York, N.Y. (Raymond M. D’Erasmus and  
Joseph F. X. Savona of counsel), for appellants.

Amabile & Erman, P.C., Staten Island, N.Y. (Anthony A. Lenza, Jr., of counsel), for  
respondents.

In an action, inter alia, to recover damages for medical malpractice, the defendants  
Raoul D. Rudelli and Regional Pathologists, P.C., appeal, as limited by their brief, from so much of  
an order of the Supreme Court, Richmond County (Fusco, J.), dated September 27, 2010, as, in  
effect, denied that branch of their motion which was for leave to amend their answer to assert cross  
claims for contribution and indemnification against the defendants Elias Purow and Purow, M.D.,  
Shaps M.D., P.C.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,  
and that branch of the motion of the defendants Raoul D. Rudelli and Regional Pathologists, P.C.,  
which was for leave to amend their answer to assert cross claims for contribution and  
indemnification against the defendants Elias Purow and Purow, M.D., Shaps M.D., P.C., is granted.

Leave to amend pleadings “shall be freely given upon such terms as may be just”

November 1, 2011

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(CPLR 3025[b]) and will not be denied unless the amended pleading is palpably insufficient or totally devoid of merit, or unless prejudice or surprise to the opposing party would directly result from the delay in seeking leave to amend (*see Jablonski v Jakaitis*, 85 AD3d 969, 970-971; *Young v Estate of Young*, 84 AD3d 1359, 1360). Inasmuch as none of the foregoing grounds existed here, the Supreme Court should have granted that branch of the appellants' motion which was for leave to amend their answer to assert cross claims for contribution and indemnification against the respondents.

The respondents' remaining contentions are without merit.

MASTRO, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court