

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

D32719
O/ct

_____AD3d_____

Argued - October 6, 2011

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-08980

DECISION & ORDER

Courthouse Corporate Center, LLC, respondent, v
Richard Schulman, etc., et al., appellants.

(Index No. 8295/08)

Michael B. Schulman & Associates, P.C., Melville, N.Y. (Richard A. Ain of counsel), for appellants.

Bauman Katz & Grill, LLP, New York, N.Y. (David M. Grill and Victor Rivera, Jr., of counsel), for respondent.

In an action to recover damages for breach of a commercial lease, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Gazzillo, J.), dated June 23, 2010, as denied their motion for summary judgment dismissing the third cause of action and granted the plaintiff's cross motion for leave to amend the complaint.

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

The defendants' motion for summary judgment dismissing the third cause of action was based on matters that could have been, but were not, raised in the defendants' prior motion for summary judgment. Multiple motions for summary judgment in the same action should be discouraged in the absence of a showing of newly-discovered evidence or other sufficient cause (*see NYP Holdings, Inc. v McClier Corp.*, 83 AD3d 426, 427; *Flomenhaft v Fine Arts Museum of Long Is.*, 255 AD2d 290; *Dillon v Dean*, 170 AD2d 574). Accordingly, the Supreme Court correctly denied the defendants' motion.

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In addition, the Supreme Court providently exercised its discretion in granting the plaintiff's cross motion for leave to amend the complaint, as the proposed amendments were "neither palpably insufficient nor patently devoid of merit, and there was no evidence that the amendment would prejudice or surprise the defendant[s]" (*Fusca v A & S Constr., LLC*, 84 AD3d 1155, 1158; see *Gitlin v Chirinkin*, 60 AD3d 901, 902).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court