

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

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_____AD3d_____

Submitted - October 6, 2011

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

2011-01258

DECISION & ORDER

In the Matter of Maria Calvaruso, appellant, v
Hunter Ambulette-Ambulance, Inc., et al.,
respondents.

(Index No. 22518/10)

Jack Baum, P.C., Brooklyn, N.Y., for appellant.

Lewis Brisbois Bisgaard & Smith LLP, New York, N.Y. (Nicholas P. Hurzeler of
counsel), for respondents.

In a proceeding to set aside a general release executed by the parties on February 26, 2010, the petitioner appeals from a judgment of the Supreme Court, Queens County (Elliot, J.), entered December 16, 2010, which denied the petition and dismissed the proceeding.

ORDERED that on the Court's own motion, the proceeding is converted into an action to set aside the general release, the notice of petition is deemed to be the summons, and the petition is deemed to be the complaint (*see* CPLR 103[c]); and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

The Supreme Court properly declined to set aside the release entered into by the parties on February 26, 2010. "A party seeking to set aside a release on the ground of fraud bears the burden of establishing 'a material misrepresentation of fact, made with knowledge of its falsity, with intent to deceive, [and] justifiable reliance and damages'" (*Liling v Segal*, 220 AD2d 724, 726,

November 9, 2011

Page 1.

MATTER OF CALVARUSO v HUNTER AMBULETTE-AMBULANCE, INC.

quoting *Mergler v Crystal Props. Assoc.*, 179 AD2d 177, 181). Here, the documentary evidence relied upon by the appellant belies her allegations of fraud and conclusively demonstrates that she does not have a viable cause of action to set aside the release on such grounds (*see Leeds, Morelli & Brown, P.C. v Hernandez*, 55 AD3d 794, 795).

The appellant's remaining contentions are without merit.

Accordingly, the Supreme Court properly dismissed this matter.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court