

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

D32915
H/prt

_____AD3d_____

Argued - October 31, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2011-00014

DECISION & ORDER

Corrine Caval, appellant, v City of New York,
et al., respondents.

(Index No. 11576/05)

Nora Constance Marino, Great Neck, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Susan Paulson of counsel; Azziza J. Bensaid on the brief), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Flug, J.), dated November 8, 2010, which denied her motion pursuant to CPLR 3126 to strike the defendants' answer and granted the defendants' cross motion to compel her to file a note of issue.

ORDERED that the order is affirmed, with costs.

The plaintiff failed to show that the defendants violated a conditional order of preclusion, that they otherwise failed to comply with the plaintiff's discovery demands, or that, if they did fail to so comply, such failure was willful or contumacious. Accordingly, the Supreme Court did not improvidently exercise its discretion in denying the plaintiff's motion pursuant to CPLR 3126 to strike the defendants' answer (*see Morano v Westchester Paving & Sealing Corp.*, 7 AD3d 495, 496; *see also Mazza v Seneca*, 72 AD3d 754; *Steven L. Levitt & Assoc., P.C. v Balkin*, 54 AD3d 403, 406; *Kuzmin v Visiting Nurse Serv. of N.Y.*, 22 AD3d 643, 644). The Supreme Court also providently exercised its discretion in granting the defendants' cross motion to compel the plaintiff to file a note of issue, as discovery was complete and the additional discovery to which the plaintiff claimed she was entitled was not material or necessary to the prosecution of her action (*cf.*

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Steven L. Levitt & Assoc., P.C. v Balkin, 54 AD3d at 406; *see generally Foster v Herbert Slepoy Corp.*, 74 AD3d 1139; *Casabona v Huntington Union Free School Dist.*, 29 AD3d 723; *Vyas v Campbell*, 4 AD3d 417, 418).

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court