

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

D33287
O/prt

_____AD3d_____

Argued - November 14, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-10604
2011-03628

DECISION & ORDER

Rawl Mars, etc., et al., appellants, v
Patricia E. Sharp, et al., respondents.

(Index No. 44983/00)

The Berkman Law Office, LLC, Brooklyn, N.Y. (Robert J. Tolchin and Aaron N. Solomon of counsel), for appellants.

Armienti, DeBellis, Guglielmo & Rhoden, LLP, New York, N.Y. (Vanessa Corchia of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from (1) an order of the Supreme Court, Kings County (Vaughan, J.), dated May 12, 2010, which, inter alia, conditionally granted that branch of the defendants' cross motion which was pursuant to CPLR 3126(3) to the extent of directing the dismissal of the complaint in the event that the plaintiffs failed to comply with certain discovery deadlines, and (2) an order of the same court dated September 29, 2010, which denied their motion, among other things, to vacate the portion of the order dated May 12, 2010, that directed the dismissal of the complaint in the event that the plaintiffs failed to comply with certain discovery deadlines and to extend the time for the plaintiff Reginald Martin to appear for a deposition, which time frame was originally set forth in the order dated May 12, 2010, and granted that branch of the defendants' cross motion which was pursuant to CPLR 3126(3) to dismiss the complaint based on the plaintiffs' failure to comply with the order dated May 12, 2010.

ORDERED that the appeal from the order dated May 12, 2010, is dismissed as abandoned; and it is further,

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ORDERED that order dated September 29, 2010, is affirmed; and it is further,

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

The plaintiffs failed to comply with the order dated May 12, 2010, as the plaintiff Reginald Martin failed to appear for a deposition within the time frame set forth in the order. As a result of this failure, the portion of the order dated May 12, 2010, directing dismissal of the complaint, became absolute (*see Hall v Penas*, 5 AD3d 549). To be relieved of the adverse impact of the order, the plaintiffs were required to demonstrate a reasonable excuse for the default and the existence of a potentially meritorious cause of action (*see Matter of Denton v City of Mount Vernon*, 30 AD3d 600). The plaintiffs failed to do so.

The plaintiffs' remaining contentions are without merit.

Accordingly, the Supreme Court providently exercised its discretion in granting that branch of the defendants' cross motion which was pursuant to CPLR 3126(3) to dismiss the complaint based on the plaintiffs' failure to comply with the order dated May 12, 2010, and in denying the plaintiffs' motion, inter alia, to vacate the portion of the order dated May 12, 2010, that directed the dismissal of the complaint in the event the plaintiff failed to comply with certain discovery deadlines.

Although the plaintiffs appeal from the order dated May 12, 2010, they raise no arguments relating to the propriety of that order. Accordingly, the appeal from the order dated May 12, 2010, is dismissed as abandoned (*see Torres v American Bldg. Maintenance Co. of NY*, 51 AD3d 905).

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court