

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

D33368
Y/prt

_____AD3d_____

Submitted - December 1, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-11543

DECISION & ORDER

Virginia Shell, respondent, v
Kone Elevator Co., appellant,
et al., defendant.

(Index No. 12090/06)

Costello, Shea & Gaffney, LLP, New York, N.Y. (Frederick N. Gaffney, Sooyung T.
A. Lee, and Jessica J. Beauvais of counsel), for appellant.

Robert A. Cardali & Associates, LLP (Arnold E. DiJoseph, P.C., New York, N.Y.
[Arnold E. DiJoseph III], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Kone Elevator Co. appeals from an order of the Supreme Court, Kings County (Kramer, J.), dated October 8, 2010, which denied its motion to strike the plaintiff's errata sheet relating to the transcript of her deposition testimony or, in the alternative, to compel the further deposition of the plaintiff.

ORDERED that on the Court's own motion, the defendant's notice of appeal is deemed to be an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]; *Berger v Fornari*, 12 AD3d 389); and it is further,

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the motion of the defendant Kone Elevator Co. which was to strike the plaintiff's errata sheet relating to the transcript of her deposition testimony and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed, with costs to the defendant Kone Elevator Co.

December 20, 2011

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Under CPLR 3116(a), when the transcript of a witness's deposition testimony is submitted for his or her examination, "any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them."

Here, the plaintiff made numerous, significant, substantive changes to her deposition testimony, taken in August 2007 and April 2010, on her errata sheet. However, the plaintiff did not provide a reason for any of those changes. Consequently, the Supreme Court should have granted that branch of the motion of the defendant Kone Elevator Co. (hereinafter Kone) which was to strike the plaintiff's errata sheet (*see Kelley v Empire Roller Skating Rink, Inc.*, 34 AD3d 533, 534; *Marzan v Persaud*, 29 AD3d 652, 653; *Riley v ISS Intl. Serv. Sys.*, 284 AD2d 320; *cf. Cillo v Resjefal Corp.*, 295 AD2d 257).

In light of our determination, Kone's remaining contentions have been rendered academic.

DILLON, J.P., FLORIO, CHAMBERS and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court