

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

D33460
Y/kmb

_____AD3d_____

Submitted - December 14, 2011

WILLIAM F. MASTRO, A.P.J.
RUTH C. BALKIN
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-07604

DECISION & ORDER

Daphne Kallas, appellant, v David Costello,
respondent.

(Index No. 12232/10)

Monaco & Monaco, LLP, Brooklyn, N.Y. (Frank A. Delle Donne of counsel), for
appellant.

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (John W. Hoefling of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Kings County (Vaughan, J.), dated July 13, 2011, which granted the
defendant's motion for a change of venue from Kings County to Orange County.

ORDERED that the order is reversed, on the facts and in the exercise of discretion,
with costs, the defendant's motion for a change of venue from Kings County to Orange County is
denied, and the Clerk of the Supreme Court, Orange County, is directed to deliver to the Clerk of the
Supreme Court, Kings County, all papers filed in this action and certified copies of all minutes and
entries (*see* CPLR 511[d]).

The Supreme Court improvidently exercised its discretion in granting the defendant's
motion for a change of venue from Kings County to Orange County, since the defendant's motion

December 27, 2011

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to change venue, based upon an allegedly improper county, was not served within 15 days after service of his demand for a change of venue (*see* CPLR 511[b]; *Wilkerson v 134 Kitty's Corp.*, 49 AD3d 718; *Parks v Costco Wholesale Membership, Inc.*, 19 AD3d 570), and there is nothing in the record which suggests that this case falls within the narrow exception to the rule (*compare* *Brash v Richards*, 87 AD3d 556; *Accardi v Kaufman*, 82 AD3d 803).

MASTRO, A.P.J., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court