

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

D33621  
C/kmb

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Submitted - November 16, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
L. PRISCILLA HALL  
JEFFREY A. COHEN, JJ.

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2011-02192

DECISION & ORDER

Janique Palomini, respondent, v Eileen Puglisi, et al.,  
appellants, et al., defendant.

(Index No. 16056/06)

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Mulholland, Minion, Duffy, Davey, McNiff & Beyrer, Williston Park, N.Y. (Robert A. Seeman of counsel), for appellants.

Dell, Little, Trovato & Vecere, LLP, Bohemia, N.Y. (Keri A. Wehrheim of counsel), for respondent.

In an action, inter alia, to recover damages for intentional infliction of emotional distress, assault and battery, and negligence, the defendants Eileen Puglisi, William Murphy, and the Roman Catholic Diocese of Rockville Centre appeal from an order of the Supreme Court, Nassau County (Lally, J.), entered January 26, 2011, which denied their motion pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against them for failure to prosecute.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the appellants' motion pursuant to CPLR 3216 to dismiss the complaint as the plaintiff demonstrated a justifiable excuse for her delay in filing a note of issue, as well as the existence of a potentially meritorious cause of action (*see Baczkowski v Collins Constr. Co.*, 89 NY2d 499, 503; *Kadyimov v Mackinnon*, 82 AD3d 938).

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

January 17, 2012

PALOMINI v PUGLISI