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

D33647
H/prt

_____AD3d_____ Argued - December 19, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-09244 DECISION & ORDER

Blanche, Verte & Blanche, Ltd., plaintiff-respondent, v Joseph Mauro & Sons, appellant, Shore Drug, Inc., defendant-respondent.

(Index No. 18062/04)

Guararra & Zaitz LLP, New York, N.Y. (Michael J. Guararra of counsel), for appellant.

Neil H. Greenberg & Associates, P.C., Westbury, N.Y. (Justin M. Reilly of counsel), for plaintiff-respondent.

In an action to recover damages for negligence and breach of contract, the defendant Joseph Mauro & Sons appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated September 1, 2010, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it and, in effect, in the alternative, to disqualify the plaintiff's attorney.

ORDERED that the order is affirmed, with costs to the plaintiff-respondent.

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The Supreme Court properly denied that branch of the appellant's motion which was for summary judgment dismissing the complaint and all cross claims insofar as asserted against it as violative of the rule against successive motions for summary judgment (*see Sutter v Wakefern Food Corp.*, 69 AD3d 844, 845; *Kimber Mfg., Inc. v Hanzus*, 56 AD3d 615, 616; *Crane v JAB Realty, LLC*, 48 AD3d 504; *Williams v City of White Plains*, 6 AD3d 609).

The Supreme Court also properly denied that branch of the appellant's motion which was, in effect, to disqualify the plaintiff's attorney on the ground that he was likely to be called as a witness on a significant issue of fact (*see* 22 NYCRR 1200.7, rule 3.7). Since the appellant "failed to offer any proof as to the content or subject matter of the testimony that might be elicited from the [plaintiff's] attorney," nor is it "apparent from the record as to why it is necessary to call him as a witness," the appellant "failed to demonstrate that the testimony of the [plaintiff's] attorney was necessary" (*Bentvena v Edelman*, 47 AD3d 651, 651-652; *see Hudson Val. Mar., Inc. v Town of Cortlandt*, 54 AD3d 999, 1000; *Broadwhite Assoc. v Truong*, 237 AD2d 162; *cf. Brunette v Gianfelice*, 171 AD2d 719; *Gasoline Expwy v Sun Oil Co. of Pa.*, 64 AD2d 647, 647-648, *affd* 47 NY2d 847).

SKELOS, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court