

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

D33897
W/kmb

_____AD3d_____

Submitted - January 18, 2012

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-06778

DECISION & ORDER

Katharine Stock, et al., respondents, v Nichol Morizzo, doing business as Village Hair Studio, et al., defendants, Mr. Beauty Equipment, Ltd., appellant (and third-party actions).

(Index No. 16290/03)

Andrea G. Sawyers, Melville, N.Y. (David R. Holland of counsel), for appellant.

Dubow, Smith & Marothy, Bronx, N.Y. (Steven J. Mines of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Mr. Beauty Equipment, Ltd., appeals from an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated May 31, 2011, which denied its renewed motion to compel the plaintiff Katharine Stock to submit to an independent neuropsychiatric examination.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, with costs, and the renewed motion of the defendant Mr. Beauty Equipment, Ltd., to compel the plaintiff Katharine Stock to submit to an independent neuropsychiatric examination is granted.

The Supreme Court, in its discretion, may grant permission to conduct additional discovery after the filing of a note of issue and certificate of readiness where the moving party demonstrates that “unusual or unanticipated circumstances” developed subsequent to the filing that require additional pretrial proceedings to prevent substantial prejudice (22 NYCRR 202.21[d]; *see*

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Lopez v Retail Prop. Trust, 84 AD3d 891; *Wigand v Modlin*, 82 AD3d 1213; *Owen v Lester*, 79 AD3d 992; *Audiovox Corp. v Benyamini*, 265 AD2d 135, 140). Here, more than two years after the filing of the note of issue and certificate of readiness, the plaintiffs served a neuropsychiatric report, which alleged that the injured plaintiff suffered from new or additional psychiatric injuries and that her psychological injuries had dramatically changed. Under these circumstances, the appellant demonstrated that “unusual or unanticipated circumstances” developed subsequent to the filing of the note of issue and certificate of readiness, justifying a neuropsychiatric examination of the injured plaintiff (see *Sorrentino v Fedorczuk*, 85 AD3d 759, 760; *Singh v 244 W. 39th St. Realty, Inc.*, 65 AD3d 1325, 1326; *Karakostas v Avis Rent A Car Sys.*, 306 AD2d 381, 382; *Huggins v New York City Tr. Auth.*, 225 AD2d 732, 733). Accordingly, the Supreme Court should have granted the appellant’s renewed motion to compel the injured plaintiff to submit to an independent neuropsychiatric examination.

We have not considered the appellant’s contention that the injured plaintiff should also be compelled to submit to an additional deposition, which was improperly raised for the first time in reply papers, and not considered by the Supreme Court (see *Encarnacion v Smith*, 70 AD3d 628, 629; *Goldstein v Haberman*, 183 AD2d 807),

SKELOS, J.P., DICKERSON, HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court