

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

D34087
O/mv

_____AD3d_____

Argued - January 27, 2012

RUTH C. BALKIN, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2011-09154

DECISION & ORDER

ATC Healthcare, Inc., appellant-respondent,
v Goldstein Golub Kessler, LLP, respondent-appellant.

(Index No. 2126/09)

Wolf Haldenstein Adler Freeman & Herz, LLP, New York, N.Y. (Eric B. Levine and Daniel Tepper of counsel), for appellant-respondent.

Arnold & Porter, New York, N.Y. (Veronica E. Rendon, Kelly M. Barrett, and William Miller of counsel), for respondent-appellant.

In an action, inter alia, to recover damages for accounting malpractice, the plaintiff appeals, by permission, from so much of an order of the Supreme Court, Nassau County (Warshawsky, J.), entered September 7, 2011, as required it to pay 40% of the cost of scanning its document production into a litigation database, and the defendant cross-appeals from so much of the same order as required it to pay 60% of the costs of scanning the plaintiff's document production into the litigation database.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

The trial court is vested with broad discretion over the management of discovery and its determinations will not be disturbed absent an improvident exercise of discretion (*see 306 Rutledge, LLC v City of New York*, 90 AD3d 1026; *Clark v Halmar Equities, Inc.*, 88 AD3d 940). Under the circumstances of this case, we discern no basis to disturb the Supreme Court's discretionary determination to apportion the costs of scanning the plaintiff's document production

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into a litigation database at 40% to the plaintiff and 60% to the defendant.

The plaintiff's remaining contention is without merit.

The defendant's remaining contention is raised for the first time on appeal and, thus, is not properly before this Court.

BALKIN, J.P., DICKERSON, BELEN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court