

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

D34370

H/nl

_____AD3d_____

Argued - February 10, 2012

RUTH C. BALKIN, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
ROBERT J. MILLER, JJ.

2011-04304

DECISION & ORDER

Kun Sik Kim, respondent, v State Street Hospitality, LLC,
et al., appellants, et al., defendant.

(Index No. 21167/08)

Downing & Peck, P.C., New York, N.Y. (Marguerite D. Peck of counsel), for appellants.

Paul Schietroma, P.C., New York, N.Y. (Powers & Santola, LLP [Michael J. Hutter], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants State Street Hospitality, LLC, Nytex Development, Inc., and Martin Environmental Services, Inc., appeal from an order of the Supreme Court, Queens County (Weiss, J.), dated March 17, 2011, which denied their motion for leave to renew their opposition to the plaintiff's prior cross motion, inter alia, for summary judgment on the issue of liability on the Labor Law § 240(1) cause of action insofar as asserted against them, which had been granted in an order of the same court dated September 20, 2010.

ORDERED that the order dated March 17, 2011, is affirmed, with costs.

The "new" evidence submitted in support of the appellants' motion for leave to renew the plaintiff's prior cross motion, inter alia, for summary judgment on the issue of liability on the Labor Law § 240(1) cause of action would not have changed the prior determination (*see* CPLR 2221[e][2]; *Grossman v New York Life Ins. Co.*, 90 AD3d 990, 992). Accordingly, the Supreme Court did not improvidently exercise its discretion in denying the appellants' motion for leave to renew their opposition to the plaintiff's prior cross motion (*see Matter of Choy v Mai Ling Lai*, 91

April 3, 2012

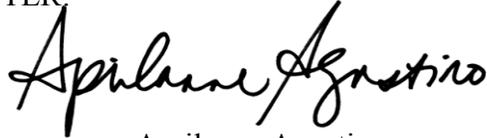
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AD3d 772).

BALKIN, J.P., BELEN, HALL and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court