

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

D36117
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_____AD3d_____

Argued - September 14, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
ROBERT J. MILLER, JJ.

2012-00843

DECISION & ORDER

Kristen Hoffman, et al., respondents, v United Methodist
Church, appellant.

(Index No. 19883/05)

Simon Lesser, P.C., New York, N.Y. (Renee Simon Lesser, Leonard F. Lesser, and
Anika L. Rapple of counsel), for appellant.

Sacks & Sacks, LLP, New York, N.Y. (Scott N. Singer of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from
an order of the Supreme Court, Suffolk County (Rebolini, J.) dated December 21, 2011, which
denied its motion pursuant to CPLR 3126 to preclude the plaintiffs from offering certain evidence
at trial on the ground of spoliation of evidence.

ORDERED that the order is affirmed, with costs.

In support of its motion pursuant to CPLR 3126 to impose the sanction of preclusion
of certain evidence on the ground of the plaintiffs' alleged spoliation of MRI films dated November
16, 2007, the defendant failed to demonstrate that the plaintiffs were responsible for the loss of the
original MRI films, and failed to demonstrate that the plaintiffs' allegedly negligent loss of a copy
of the MRI films deprived the defendant of its ability to establish its defense. Accordingly, the
Supreme Court providently exercised its discretion in denying the defendant's motion (*see Falcone
v Karagiannis*, 93 AD3d 632, 634; *Dessources v Good Samaritan Hosp.*, 65 AD3d 1008, 1010;
Cordero v Mirecle Cab Corp., 51 AD3d 707, 709).

ANGIOLILLO, J.P., DICKERSON, BELEN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

October 10, 2012

HOFFMAN v UNITED METHODIST CHURCH