

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

D36165
W/kmb

_____AD3d_____

Argued - June 19, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2011-05456

DECISION & ORDER

Mildred Belen Roman, appellant, v 233 Broadway Owners, LLC, et al., respondents (and a third-party action).

(Index No. 31091/05)

Michael N. David, New York, N.Y. (Kenneth J. Gorman of counsel), for appellant.

Thomas D. Hughes, New York, N.Y. (Richard C. Rubinstein and David D. Hess of counsel), for respondents 233 Broadway Owners, LLC, and Witkoff Group, Inc.

Calinoff & Katz, P.C., New York, N.Y. (Arnold I. Katz, Charles C. Eblen, Kansas City, Missouri, pro hac vice, and Bethany Munyan Shelton, pro hac vice, of counsel), for respondent ADT Security Services, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Velasquez, J.), dated April 6, 2011, as granted those branches of the separate motions of the defendant ADT Security Services, Inc., and the defendants 233 Broadway Owners, LLC, and Witkoff Group, Inc., which were for leave to serve and file successive motions for summary judgment.

ORDERED that the appeal from so much of the order as granted that branch of the motion of the defendants 233 Broadway Owners, LLC, and Witkoff Group, Inc., which was for leave to serve and file successive motions for summary judgment is dismissed as academic in light of our determination of the appeal from an order of the same court dated May 27, 2010 (*see Roman v 233 Broadway Owners, LLC*, _____AD3d_____, Appellate Division Docket No. 2010-07173 [decided herewith]); and it is further,

October 17, 2012

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ROMAN v 233 BROADWAY OWNERS, LLC

ORDERED that the order dated April 6, 2011, is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the defendant ADT Security Services, Inc., payable by the plaintiff.

The plaintiff's contention that the Supreme Court erred in granting the defendant ADT Security Services, Inc., leave to serve and file successive motions for summary judgment is improperly raised for the first time on this appeal and, therefore, is not properly before this Court.

There is no merit to the plaintiff's remaining contention that her note of issue should be reinstated.

ANGIOLILLO, J.P., DICKERSON, BELEN and CHAMBERS, 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