

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

D36184
O/kmb

_____AD3d_____

Submitted - September 19, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-08868

DECISION & ORDER

Patricia Ditroia, et al., appellants, v Stephanie
Buck-Haskin, respondent.

(Index No. 16912/06)

Jonah Grossman, Jamaica, N.Y. (Lawrence B. Lame of counsel), for appellants.

Morris Duffy Alonso & Faley, New York, N.Y. (Iryna S. Krauchanka of counsel), for
respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from
an order of the Supreme Court, Queens County (O'Donoghue, J.), dated April 20, 2011, which
denied their motion to restore the case to the trial calendar, with leave to renew, inter alia, upon the
completion of urodynamic testing of the plaintiff Patricia DiTroia.

ORDERED that the order is reversed, on the law, with costs, and the plaintiffs'
motion to restore the case to the trial calendar is granted.

Although a defendant is entitled to conduct a physical examination of a plaintiff who
puts his or her physical condition at issue in an action (*see* CPLR 3121[a]; *D'Adamo v Saint
Dominic's Home*, 87 AD3d 966, 970), a plaintiff may not be compelled to undergo medical testing
procedures when it is established that the tests are invasive, painful, and harmful to the plaintiff's
health (*see D'Adamo v Saint Dominic's Home*, 87 AD3d at 970; *Rosatio v BNS Bldgs., LLC*, 67
AD3d 984; *Bobka v Mann*, 308 AD2d 497, 498; *Lapera v Shafron*, 159 AD2d 614). Here, the
plaintiffs established that the urodynamic testing sought by the defendant is painful, invasive, and
would be potentially harmful to the injured plaintiff's health (*see Santero v Kotwal*, 4 AD3d 464,
465; *Bobka v Mann*, 308 AD2d at 498; *Marino v Pena*, 211 AD2d 668). Under these circumstances,

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the injured plaintiff, who has already been examined by the defendant's medical expert, should not be compelled to additionally undergo urodynamic testing in order to restore this case to the trial calendar.

ENG, P.J., SKELOS, CHAMBERS and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court