

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

D36196
N/kmb

_____AD3d_____

Submitted - September 19, 2012

MARK C. DILLON, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-09276

DECISION & ORDER

In the Matter of Janet Sealy, appellant, v
Kieran C. Morris, et al., respondents.

(Index No. 8734/11)

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for
appellant.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D.
Sweetbaum]), of counsel, for respondents.

In a proceeding pursuant to CPLR 325 to remove an action to recover damages for
personal injuries entitled *Sealy v Morris*, pending in the Civil Court, Queens County, under Index
No. 0140867/04, to the Supreme Court, Queens County, and for leave to amend the complaint to
increase the ad damnum clause, the petitioner appeals from an order of the Supreme Court, Queens
County (Rosengarten, J.), entered September 2, 2011, which denied the petition.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the petition to
remove the petitioner's underlying personal injury action from the Civil Court, Queens County, to
the Supreme Court, Queens County (*see* CPLR 325[b]), and for leave to amend the complaint to
increase the ad damnum clause (*see* CPLR 3025[b]). To demonstrate her entitlement to this relief,
the petitioner was required, inter alia, to submit a physician's affirmation (1) showing a causal
connection between her condition and the accident, and (2) specifying the claimed change in her
condition, any injuries that had not been previously considered, or the extent to which the condition
had worsened (*see Cohen v Kim*, 23 AD3d 602; *Joefield v New York City Tr. Auth.*, 11 AD3d 586;
Dolan v Garden City Union Free School Dist., 113 AD2d 781, 785; *London v Moore*, 32 AD2d

October 24, 2012

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543). The physician's affirmation submitted by the petitioner in support of her petition failed, inter alia, to establish that the increased injuries to her lower back which required surgery were causally related to the subject motor vehicle accident, as it failed to account for the fact that the petitioner had claimed to have injured her lower back in accidents that had occurred both prior and subsequent to the subject motor vehicle accident (*see Bell v Margolis*, 82 AD2d 817; *Northern Ins. Co. of N.Y. v Kregsman*, 26 AD2d 648).

DILLON, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court