

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

D36214
C/hu

_____AD3d_____

Argued - September 4, 2012

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2011-02691

DECISION & ORDER

Kevin Then, etc., et al., appellants, v New York City
Transit Authority, respondent, et al., defendant.

(Index No. 19036/05)

Ira M. Perlman and Robert D. Rosen, Roslyn, N.Y., for appellants (one brief filed).

Wallace D. Gossett, Brooklyn, N.Y. (Armienti, DeBellis, Guglielmo & Rhoden, LLP
[Vanessa M. Corchia], 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 (Lane, J.), entered January 10, 2011, which denied their motion, in effect, pursuant to CPLR 3126(3) to strike the answer of the defendant New York City Transit Authority for failure to comply with a conditional order of preclusion of the same court dated March 4, 2009.

ORDERED that the order entered January 10, 2011, is affirmed, with costs.

Contrary to the plaintiffs' contention, the defendant New York City Transit Authority (hereinafter the NYCTA) timely complied with the Supreme Court's conditional order of preclusion dated March 4, 2009. Consequently, that conditional order never became absolute (*see Caval v City of New York*, 89 AD3d 885; *McGroarty v Long Is. Coll. Hosp.*, 37 AD3d 431, 431; *cf. Pierre v 100 Corp.*, 97 AD3d 804, 805), and the Supreme Court correctly denied the plaintiffs' motion to strike the NYCTA's answer (*see Caval v City of New York*, 89 AD3d at 885; *McGroarty v Long Is. coll.*

October 24, 2012

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Hosp., 37 AD3d at 431).

SKELOS, J.P., BALKIN, LEVENTHAL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive style with a large, prominent initial "A".

Aprilanne Agostino
Clerk of the Court