

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

D36517
G/mv

_____AD3d_____

Argued - October 15, 2012

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2011-09629

DECISION & ORDER

Madelon Lief, etc., appellant,
v Emita Hill, et al., respondents, et al., defendant.

(Index No. 16807/09)

Kurzman Grant, White Plains, N.Y. (Marc G. Kurzman of counsel), for appellant.

Bleakley Platt & Schmidt, LLP, White Plains, N.Y. (Robert D. Meade of counsel),
for respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by her notice of appeal and brief, from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered August 30, 2011, as granted that branch of the motion of the defendants Emita Hill and Frederick Abbabio which was to strike the plaintiff's demand for a trial by jury.

ORDERED that the order is affirmed insofar as appealed from, with costs.

“[T]he deliberate joinder of claims for legal and equitable relief arising out of the same transaction amounts to a waiver of the right to demand a jury trial” (*Anesthesia Assoc. of Mount Kisco, LLP v Northern Westchester Hosp. Ctr.*, 59 AD3d 481, 482, quoting *Hebranko v Bioline Labs.*, 149 AD2d 567, 567-568; *cf.* CPLR 4102[c]). Here, the Supreme Court properly determined that the plaintiff waived her right to a trial by jury by joining legal and equitable causes of action arising from the same transaction and seeking both legal and equitable relief (*see Whipple v Trail Props.*, 261 AD2d 470; *cf. Hebranko v Bioline Labs.*, 149 AD2d 567, 568). Accordingly, the court properly granted that branch of the motion of the defendants Emita Hill and Frederick Abbabio which was to strike the plaintiff's demand for a trial by jury.

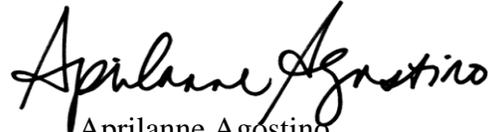
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MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court