
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 50
230 Park Avenue Holdco, LLC,
Appellant,
v.
Kurzman Karelsen & Frank, LLP, et
al.,
Respondents.

Jay B. Solomon, for appellant.
Charles Palella, for respondents.

MEMORANDUM:

The order of the Appellate Division should be modified,
without costs, by granting plaintiff's motion for summary
judgment dismissing defendants' third affirmative defense, and,
as so modified, affirmed and the certified question answered in
the negative.

Plaintiff met its initial burden of demonstrating its entitlement to summary judgment dismissing defendants' third affirmative defense alleging that plaintiff breached the stipulation between the parties (see CPLR 3212 [b]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Defendants' submissions in opposition to plaintiff's motion failed to raise a material triable issue of fact (see CPLR 3212 [b]; see generally Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]).

* * * * *

Order modified, without costs, by granting plaintiff's motion for summary judgment dismissing the third affirmative defense and, as so modified, affirmed and certified question answered in the negative, in a memorandum. Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur. Chief Judge DiFiore took no part.

Decided June 23, 2016