

109 A.D.3d 459
Supreme Court, Appellate Division,
Second Department, New York.

Mary Lou KNOCH, appellant,

v.

CITY OF NEW YORK, respondent.

Aug. 7, 2013.

Synopsis

Background: Plaintiff brought action against city, seeking to recover damages for personal injuries. The Supreme Court, Kings County, Kurtz, J., denied plaintiff's motion for monetary sanctions for discovery violations. Plaintiff appealed.

Holding: The Supreme Court, Appellate Division, held that monetary sanction of \$2,500 was warranted for failing to fully and timely comply with court-ordered discovery requests.

Affirmed as modified.

Attorneys and Law Firms

*270 Law Offices of Brad A. Kauffman, P.C., New York, N.Y. (David S. Zwerin of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and Julie Steiner of counsel), for respondent.

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

Opinion

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Kurtz, J.),

dated September 6, 2012, as denied that branch of her motion pursuant to CPLR 3126 which was to impose a monetary sanction upon the defendant for failure to provide discovery and granted that branch of the motion which was for an award of costs only to the extent of awarding her costs in the sum of \$100.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof denying that branch of the plaintiff's motion which was to impose a monetary sanction upon the defendant, and substituting *271 therefor a provision granting that branch of the motion to the extent of imposing a monetary sanction upon the defendant in the sum of \$2,500 payable to the plaintiff's counsel; as so modified, the order is affirmed insofar as appealed from, with costs to the plaintiff.

The defendant did not begin to produce evidence crucial to the prosecution of this case until more than three years after such production was ordered by the court, five months after the original trial date was adjourned, and two months after the plaintiff refiled the note of issue. Consequently, a monetary sanction in the sum of \$2,500 is warranted to compensate the plaintiff's counsel for the time expended and costs incurred in connection with the defendant's failure to fully and timely comply with court-ordered disclosure and discovery requests (*see* CPLR 3126; *O'Neill v. Ho*, 28 A.D.3d 626, 627, 814 N.Y.S.2d 202).

The plaintiff's remaining contentions are improperly raised for the first time on appeal, and therefore are not properly before this Court (*see 1812 Quentin Rd., LLC v. 1812 Quentin Rd. Condominium Ltd.*, 94 A.D.3d 1070, 1072, 943 N.Y.S.2d 206; *Schiff v. State of New York*, 31 A.D.3d 526, 529, 818 N.Y.S.2d 597; *Cadle Co. v. Organes Enters., Inc.*, 29 A.D.3d 927, 929, 815 N.Y.S.2d 732).

All Citations

109 A.D.3d 459, 970 N.Y.S.2d 270, 2013 N.Y. Slip Op. 05557