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Traub Lieberman Partner Colleen E. Hastie Obtains Reversal of Lower Court Order Denying Summary Judgment

Related Attorneys: Colleen E. Hastie

Traub Lieberman Partner Colleen Hastie obtains a reversal from the Appellate Term of the lower court's decision denying summary judgment for failure to establish good cause under *Brill v. City of New York* for late filing of Defendant's summary judgment motion.

In the underlying case, Plaintiff brought suit in Kings County Supreme Court against the Defendant, an operator of an assisted living facility, seeking recovery for injuries sustained following an assault by a resident of the facility. After years of protracted discovery disputes, including the premature filing of two Notes of Issue, the case was transferred to City Civil Court to allow for the completion of discovery. The Civil Court denied Defendant's motion for summary judgment, filed more than 120 days after the filing of the second Note of Issue, citing Defendant's failure to establish good cause for the late filing.

On appeal, the Traub Lieberman team outlined the circumstances proceeding the filing of its motion, including plaintiff's dilatory conduct, the court's policy of allowing the Note of Issue to remain despite the existence of outstanding discovery, and COVID-19 restrictions which impacted Defendant's ability to make its motion.

The Appellate Term, in reversing the lower court's decision and remanding the case to the lower court for a determination on the merits, held that the Note of Issue was filed before discovery was complete and that, at least until the COVID-19 emergency was declared, Defendant appropriately and consistently sought to avoid making a late motion by timely moving to either vacate the Note of Issue or to extend its time to move for summary judgment.