

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. ROBERT J. McDONALD
Justice

IAS PART 34

- - - - - x

BHANMATTIE RAJKUMAR KUMAR,

Index No.: 26568/11

Plaintiff,

Motion Date: 4/24/13

- against -

Motion No.: 78

PI ASSOCIATES LLC, CAPITAL ONE BANK
and PRETTY GIRL,

Motion Seq.: 3

Defendants.

- - - - - x

The following papers numbered 1 to on this motion:

	<u>Papers Numbered</u>
Plaintiff's Notice of Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	1-4
PI Associates, LLC's Affirmation in Opposition- Affidavit(s)-Exhibit(s)	5-7
Plaintiff's Reply Affirmation-Exhibit(s)	8-10

Plaintiff, by notice of motion, seeks an order the Court, pursuant to CPLR § 3403(a) (4), granting plaintiff a special trial preference due to plaintiff's age of 72.

Defendant PI Associates submits an affirmation in opposition claiming that plaintiff's motion for a special trial preference is premature as discovery has not been completed and although plaintiff did file a Note of Issue, "it is expected that the Note of Issue will be struck as result of motion practice" as discovery has not been completed.

Plaintiff files a reply to defendant's affirmation in opposition maintaining that new authorizations were sent to defendants even though they were previously provided.

This is a personal injury action in which the plaintiff,

Bhanmattie Rajkumar Kumar, seeks to recover damages for injuries she allegedly sustained as a result of a trip and fall accident on the sidewalk in front of 136-21 Roosevelt Avenue, Queens County, New York.

Pursuant to order of this Court dated January 30, 2013, plaintiff's motion for a trial preference was denied as premature without prejudice to renew at such time as discovery has been completed a note of issue has been filed.

The note of issue and certificate of readiness were filed by the plaintiff on March 15, 2013. Plaintiff maintains that all discovery has been provided to the defendants and that plaintiff through her own initiative contacted defendants' doctors for an IME evaluation on April 30, 2013.

Plaintiff now moves for an order pursuant to CPLR § 3403(a)(4) granting a plaintiff who is over the age of 70 a special trial preference.

Accordingly, plaintiff's motion for a special trial preference pursuant to CPLR 3403 (a)(4) based upon the plaintiff's age is granted (see Andersen v Park Ctr. Assocs., 250 AD2d 473 [1st Dept. 1998]; Borenstein v City of New York, 248 AD2d 425 [2d Dept. 1998]).

Dated: Long Island City, NY
April 30, 2013

ROBERT J. McDONALD
J.S.Cm.