

88 A.D.3d 832 (2011)

931 N.Y.S.2d 253

BARCHELLA CONTRACTING CO., INC., Respondent,

v.

MARY LOU CASSONE, Appellant.

2010-08057.

**Appellate Division of the Supreme Court of New York, Second
Department.**

Decided October 18, 2011.

DILLON, J.P., BELEN, ROMAN and MILLER, JJ., concur.

833 *833 Ordered that the judgment is reversed, on the facts and in the exercise of discretion, with costs, the plaintiff's motion to preclude the defendant from offering expert testimony at trial is denied, and the matter is remitted to the Supreme Court, Westchester County, for a new trial.

Preclusion for failure to comply with CPLR 3101(d) is improper "unless there is evidence of intentional or willful failure to disclose and a showing of prejudice" (*Johnson v Greenberg*, 35 AD3d 380, 380 [2006], quoting *Shopsin v Siben & Siben*, 289 AD2d 220, 221 [2001] [internal quotation marks omitted]). Here, while there was evidence that the defendant's belated disclosure of her expert information in response to the plaintiff's demand therefor was intentional, any potential prejudice to the plaintiff was ameliorated by the more than six months that passed between the defendant's disclosure of her expert information and the commencement of the trial (see *Gayz v Kirby*, 41 AD3d 782 [2007]). Accordingly, the Supreme Court improvidently exercised its discretion in granting the plaintiff's motion to preclude the defendant from offering expert testimony at trial (*id.*; see *Johnson v Greenberg*, 35 AD3d 380 [2006]; *Dailey v Keith*, 306 AD2d 815 [2003], *affd* 1 NY3d 586 [2004]).

Since the defendant was prejudiced by the preclusion, the matter must be remitted to the Supreme Court, Westchester County, for a new trial.

The defendant's remaining contentions are without merit.

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