



**In the Matter of Maria Calvaruso, Appellant, v Hunter Ambulette-Ambulance, Inc.,  
et al., Respondents. (Index No. 22518/10)**

**2011-01258**

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND  
DEPARTMENT**

***89 A.D.3d 841; 932 N.Y.S.2d 346; 2011 N.Y. App. Div. LEXIS 7988; 2011 NY Slip Op  
8146***

**November 9, 2011, Decided**

**COUNSEL:** [\*\*\*1] Jack Baum, P.C., Brooklyn, N.Y.,  
for appellant.

Lewis Brisbois Bisgaard & Smith LLP, New York, N.Y.  
(Nicholas P. Hurzeler of counsel), for respondents.

**JUDGES:** DANIEL D. ANGIOLILLO, J.P., JOHN M.  
LEVENTHAL, LEONARD B. AUSTIN, SHERI S.  
ROMAN, JJ. ANGIOLILLO, J.P., LEVENTHAL,  
AUSTIN and ROMAN, JJ., concur.

**OPINION**

[\*841] [\*\*346] In a proceeding to set aside a  
general release executed by the parties on February 26,  
2010, the petitioner appeals from a judgment of the  
Supreme Court, Queens County (Elliot, J.), entered  
December 16, 2010, which denied the petition and  
dismissed the proceeding.

Ordered that on the Court's own motion, the  
proceeding is converted into an action to set aside the  
general release, the notice of petition is deemed to be the  
summons, and the petition is [\*842] deemed to be the  
complaint (*see CPLR 103 [c]*); and it is further,

Ordered that the judgment is affirmed; and it is  
further,

Ordered that one bill of costs is awarded to the  
respondents.

The Supreme Court properly declined to set aside the  
release entered into by the parties on February 26, 2010.  
"A party seeking to set aside a release on the ground of  
fraud bears the burden of establishing 'a material  
misrepresentation of fact, made with [\*\*\*2] knowledge  
of its falsity, with intent to deceive, [and] justifiable  
reliance and damages' " (*Liling v Segal*, 220 AD2d 724,  
726, 633 NYS2d 199 [1995], quoting *Mergler v Crystal  
Props. Assoc.*, 179 AD2d 177, 181, 583 NYS2d 229  
[1992]). Here, the documentary evidence relied upon by  
the appellant belies her allegations of fraud and  
conclusively demonstrates that she does not have a viable  
cause of action to set aside the release on such grounds  
(*see Leeds, Morelli & Brown, P.C. v Hernandez*, 55  
AD3d 794, 795, 866 NYS2d 311 [2008]).

The appellant's remaining contentions are without  
merit.

Accordingly, the Supreme Court properly dismissed  
this matter. Angiolillo, J.P., Leventhal, Austin and  
Roman, JJ., concur.