

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14042
O/mv

_____AD3d_____

Argued - January 23, 2007

STEPHEN G. CRANE, J.P.
GLORIA GOLDSTEIN
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-06718

DECISION & ORDER

Alex D'Ambrosio, et al., appellants, v
85 Crystal Run Company, et al., respondents.
(Action No. 1)

(Index No. 2280/00)

Betty Martin, et al., appellants, v
85 Crystal Run Company, et al., respondents.
(Action No. 2)

(Index No. 2281/00)

Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, Newburgh, N.Y. (James Alexander Burke of counsel), for appellants.

Barry McTiernan & Moore, New York, N.Y. (Gary Rome, Anthony McNulty, and Friedman Gaythwaite Wolf & Leavitt [Martha Gaythwaite] of counsel), for respondent Empire Blue Cross and Blue Shield.

Wolff & Samson, P.C., New York, N.Y. (Kenneth L. Laptook and Diana L. Buongiorno of counsel), for respondent PVI Industries, Inc., and Bleakley, Platt & Schmidt, LLP, White Plains, N.Y. (Andrea J. Smith of counsel), for respondent Protemp Heating and Air Conditioning, Inc. (one brief filed).

In related actions to recover damages for personal injuries, etc., the plaintiffs in Action Nos. 1 and 2 appeal, as limited by their brief, from stated portions of an order of the Supreme Court,

February 27, 2007

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Orange County (McGuirk, J.), dated May 31, 2006, which, inter alia, denied those branches of their motion which were (1) to preclude the use of evidence derived from testing performed by experts for the defendant Empire Blue Cross and Blue Shield on February 24, 2001, June 23, 2001, and January 15, 2003, (2) to preclude the use of evidence derived from testing performed by experts for the defendants PVI Industries, Inc., and Protemp Heating & Air Conditioning, Inc., on June 23, 2001, November 30, 2004, and March 9, 2005, and (3) to vacate an oral ruling of the same court made during a proceeding on September 23, 2005, precluding the plaintiffs from eliciting expert opinion testimony from two of the treating physicians of the plaintiff Betty Martin.

ORDERED that the appeal from so much of the order as denied the plaintiffs' motion to vacate the oral ruling is dismissed, without costs or disbursements, as no appeal lies from an order denying a motion to vacate a ruling (*see Hegarty v Ballee*, 18 AD3d 705, 706; *see Danne v Otis El. Corp.*, 276 AD2d 581, 582; *cf.* CPLR 5701[a][3]); and it is further,

ORDERED that the order is affirmed insofar as reviewed, without costs or disbursements.

Contrary to the plaintiffs' contention, the Supreme Court providently exercised its discretion in determining the proper scope of discovery (*see Hallahan v Ashland Chem. Co.*, 237 AD2d 697, 698; *Prasad v B.K. Chevrolet*, 184 AD2d 626).

CRANE, J.P., GOLDSTEIN, LIFSON and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court