

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

D14884
Y/gts

_____AD3d_____

Submitted - January 22, 2007

DAVID S. RITTER, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2005-09220

DECISION & ORDER

Juliana Madden, etc., et al., appellants, v
Richard W. Desmond, et al., respondents,
et al., defendant.

(Index No. 8981/02)

Sullivan Papain Block McGrath & Cannaco, P.C., New York, N.Y. (Stephen C. Glasser and Stephanie Hatzakos of counsel), for appellants.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. (Christopher Simone and Roseann V. Driscoll of counsel), for respondent Richard W. Desmond.

Geisler & Gabriele, LLP, Garden City, N.Y. (Lori A. Marano of counsel), for respondent Eric Lubin.

In an action to recover damages for medical malpractice and wrongful death, the plaintiffs appeal from a judgment of the Supreme Court, Queens County (Kitzes, J.), dated August 15, 2005, which, upon a jury verdict, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

On appeal the plaintiffs raise only one issue, to-wit, that the trial court erred in precluding them from introducing evidence of a consent agreement which the defendant Eric Lubin entered into with the New York Office of Professional Medical Conduct. Before trial testimony was about to commence, counsel and the court engaged in colloquy regarding the issue of questioning Dr.

April 24, 2007

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Lubin about the consent agreement, and the court stated, “I don’t believe that you can go into that area.” Counsel for the plaintiffs thereafter simply replied, “okay Judge . . . [w]e can always revisit it.” However, the plaintiffs never again raised the issue during the trial. Under these circumstances, the issue is unpreserved for appellate review (*see* CPLR 5501[a][3]).

RITTER, J.P., SANTUCCI, SKELOS and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court