

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

D15414  
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Submitted - May 3, 2007

ROBERT A. SPOLZINO, J.P.  
MARK C. DILLON  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

2006-06268

DECISION & ORDER

Balbir S. Walia, appellant, v Nassau County, et al.,  
respondents.

(Index No. 22692/99)

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Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for  
appellant.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of  
counsel), for respondents.

In an action, inter alia, to recover damages for assault, the plaintiff appeals, as limited  
by his brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), dated  
May 10, 2006, as granted that branch of the defendants' motion which was, in effect, to preclude the  
plaintiff from giving certain "John Doe" testimony at trial.

ORDERED that the appeal from the order is dismissed, with costs.

The order of the Supreme Court regarding "John Doe" evidence, while denominated  
as involving a motion for summary judgment, in fact, involved a motion in limine to preclude  
reference to an Officer "John Doe" tortfeasor during trial. An order made in advance of the trial  
determining the admissibility of evidence, as here, is neither appealable as of right nor by permission  
(see *Chateau Rive Corp. v Enclave Dev. Assoc.*, 283 AD2d 537; *Savarese v City of New York  
Housing Auth.*, 172 AD2d 506, 509; *Mauro v Village of Freeport*, 113 AD2d 876; see also CPLR  
5701[a],[c]). The order is not the functional equivalent a grant of summary judgment so as to be  
appealable (see *Rondout Elec. v Dover Union Free School Dist.*, 304 AD2d 808, 810), since the

June 5, 2007

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plaintiff here is not prevented at trial from seeking to prove all the allegations set forth in his complaint and bills of particulars.

SPOLZINO, J.P., DILLON, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court