

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

D18502
Y/prt

_____AD3d_____

Submitted - January 16, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
DAVID S. RITTER
EDWARD D. CARNI, JJ.

2007-03154

DECISION & ORDER

Unitrin Advantage Insurance Company, respondent,
v Marie Livie Duclaire, et al., appellants, et al.,
defendants.

(Index No. 7362/06)

Melissa Betancourt, P.C., Brooklyn, N.Y., for appellants.

Cambio, Votto, Cassata & Gullo, LLP, Staten Island, N.Y. (Christopher J. Albee of counsel), for respondent.

In an action for a judgment declaring the rights and obligations of the parties with respect to an automobile liability insurance policy, the defendants Marie Livie Duclaire, Rochell Dennison, Neomy Medical, P.C., Perfect Point Acupuncture, P.C., Donald Cioffi, D.C., and Prime Psychological Services, P.C., appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated January 19, 2007, as, upon, in effect, denying the plaintiff's motion for summary judgment, directed all parties to appear for depositions.

ORDERED that the appeal is dismissed, with costs.

Pursuant to CPLR 5511, only an aggrieved party may appeal from an order or judgment. To be "aggrieved," the party must have "a direct interest in the controversy which is affected by the result," and the adjudication must have "a binding force against the rights, person or property of the party" (*Matter of Richmond County Socy. for the Prevention of Cruelty to Children*, 11 AD2d 236, 239, *affd* 9 NY2d 913, *cert denied* 368 US 290). Since the appellants were not aggrieved within the meaning of CPLR 5511 by the order which, insofar as appealed from, effectively denied the plaintiff's motion for summary judgment and directed that all the parties appear for

March 25, 2008

Page 1.

UNITRIN ADVANTAGE INSURANCE COMPANY v DUCLAIRE

depositions, the appeal must be dismissed (*see DiMare v O'Rourke*, 35 AD3d 346).

RIVERA, J.P., LIFSON, RITTER and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court