

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

D19547  
X/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 12, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2007-00748

DECISION & ORDER

Lieber Realty, LLC, respondent,  
v Amber Heart Medical, P.C., appellant.

(Index No. 25877/05)

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Alan Brutton, Brooklyn, N.Y., for appellant.

In an action to recover damages for breach of a lease, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated November 30, 2006, as denied its motion, denominated as one for leave to renew and reargue, but which was, in actuality, for leave to reargue the plaintiff's application to voluntarily discontinue the action, which had been granted in an order of the same court dated June 16, 2006.

ORDERED that the appeal is dismissed, without costs or disbursements.

The defendant's motion, denominated as one for leave to renew and reargue, was not based on new facts (*see* CPLR 2221[e][2]; *Trahan v Galea*, 48 AD3d 791). Thus, the motion, although denominated as one for leave to renew and reargue, was, in actuality, a motion for leave to reargue, the denial of which is not appealable (*see Trahan v Galea*, 48 AD3d 791; *Matter of Mattie M. v Administration for Children's Servs.*, 48 AD3d 392).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, JJ., concur.

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LIEBER REALTY, LLC v AMBER HEART MEDICAL, P.C.

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2007-00748

DECISION & ORDER ON MOTION

Lieber Realty, LLC, respondent,  
v Amber Heart Medical, P.C., appellant.

(Index No. 25877/05)

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Motion by the respondent to dismiss an appeal from an order of the Supreme Court, Kings County, dated November 30, 2006, on the ground that no appeal lies from an order denying a motion for leave to reargue. By decision and order on motion of this Court dated December 14, 2007, inter alia, the motion was held in abeyance, and was referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeal, it is

ORDERED that the motion is denied as academic in light of the determination on the appeal (*see Lieber Realty, LLC v Amber Heart Medical, P.C.*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court