

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

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Submitted - May 14, 2008

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

2007-06515
2008-00590

DECISION & ORDER

Erdan Bajrovic, respondent, v Jeff Anders
Trucking, et al., appellants.

(Index No. 23140/03)

White Fleischner & Fino, LLP, New York, N.Y. (Walter Williamson and Nancy Lyness of counsel), for appellants.

Landers & Cernigliaro, P.C., Carle Place, N.Y. (Stanley A. Landers of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal (1) from an order of the Supreme Court, Kings County (Ruditzky, J.), dated May 30, 2007, which, upon the defendants' motion pursuant to CPLR 3124 to compel the plaintiff to provide expert witness information pursuant to CPLR 3101(d)(1), compelled the defendants to provide discovery to the plaintiff, and (2) from so much of an order of the same court (Ruchelsman, J.), dated November 8, 2007, as denied their motion, in effect, to resettle the prior order, and to vacate the note of issue and certificate of readiness, and, sua sponte, modified the prior order, inter alia, by denying the defendants' motion to compel the plaintiff to provide expert witness information.

ORDERED that the appeals are dismissed, without costs or disbursements.

The defendants concede that since the date of filing of these appeals the plaintiff has

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complied with their request for expert witness information pursuant to CPLR 3101(d)(1). Accordingly, the appeals have been rendered academic.

Further, we note that the appeal from so much of the order dated November 8, 2007, as, sua sponte, modified the prior order dated May 30, 2007, is not appealable as of right, as that portion of the order did not decide a motion made on notice (*see* CPLR 5701[a][2]; *Sholes v Meagher*, 100 NY2d 333, 335; *Wall St. Mail Pick Up Serv., Inc. v Lancer Ins. Co.*, 44 AD3d 851; *Lewis v City of New York*, 2 AD3d 597, 599; *Dunham v Wing*, 295 AD2d 309, 310). We decline to grant leave to appeal, as the defendants' contentions regarding that branch of their motion which was to compel the plaintiff to provide expert witness information have been rendered academic (*see* CPLR 5701[c]).

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