

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

D20411
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_____AD3d_____

Submitted - September 2, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2007-10152

DECISION & ORDER

Brenda Kennie-Burton, etc., et al., appellants,
v City of Yonkers, et al., respondents.

(Index No. 18440-06)

Marshall E. Bloomfield, Bronx, N.Y. (Clifford D. Bloomfield of counsel), for appellants.

Frank J. Rubino, Corporation Counsel, Yonkers, N.Y. (Michael Levinson of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Westchester County (Smith, J.), dated October 22, 2007, which denied, as academic, their motion to compel the defendants' compliance with discovery, and for a protective order.

ORDERED that the appeal is dismissed, with costs.

The motion which gave rise to the order appealed from was not made on notice to the defendants. Thus, the order denying the motion is not appealable as of right (*see* CPLR 5701[2]; *Sholes v Meagher*, 100 NY2d 333, 335; *Nanakumo v Gregory*, 29 AD3d 754), and we decline to grant leave to appeal.

SPOLZINO, J.P., RITTER, DILLON and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 7, 2008

KENNIE-BURTON v CITY OF YONKERS