

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

D20820
C/kmg

_____AD3d_____

Argued - October 2, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2007-01300
2007-04828

DECISION & ORDER

Natella Davidov, etc., et al., appellants,
v Anna M. Fieldman, et al., respondents.

(Index No. 13197/03)

Jaroslawicz & Jaros (Paul F. McAloon, P.C., New York, N.Y.), for appellants.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. (Christopher Simone and Deirdre E. Tracey of counsel), for respondent Anna M. Fieldman.

Peltz & Walker, New York, N.Y. (Bhalinder L. Rikhye of counsel), for respondent Jean Eddy Moise.

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (John W. Hoefling and Susan M. Ulrich of counsel), for respondent New York Hospital Medical Center of Queens.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiffs appeal from (1) an order of the Supreme Court, Queens County (Rosengarten, J.), dated December 13, 2006, which denied their motion pursuant to CPLR 4404(a) to set aside a jury verdict in favor of the defendants and against them, and for a new trial, and (2) an amended judgment of the same court entered April 19, 2007, which, upon the jury verdict, and upon the order dated December 13, 2006, denying the motion pursuant to CPLR 4404(a), is in favor of the defendants and against them, among other things, dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

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ORDERED that the amended judgment is affirmed, with one bill of costs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see Matter of Aho*, 39 NY2d 241). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the amended judgment (*see* CPLR 5501[a][1]).

During the course of this hotly-contested, seven-week trial, attorneys for both the plaintiffs and the defendants made inappropriate or improper remarks, overstepping the bounds of zealous advocacy. However, on virtually every occasion, the court sustained an objection and delivered an immediate curative instruction. Moreover, in view of the strength of the defendants' evidence, we are satisfied that instances of attorney misconduct, whether taken separately or cumulatively, did not have an effect on the jury's findings and, therefore, constituted harmless error.

The plaintiffs' remaining contentions are without merit or do not warrant reversal.

FISHER, J.P., COVELLO, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court