

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

D22422
G/prt

_____AD3d_____

Argued - February 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2007-09214

DECISION & ORDER

Vytra Health Plans, etc., respondent, v
Colossal Carting Corp., et al., defendants;
Dennis Burke, Jr., nonparty-appellant.

(Index No. 33695/06)

Kujawski & DelliCarpini, Deer Park, N.Y. (Bryan P. Kujawski of counsel), for
nonparty-appellant.

Korybski & Levinson, LLP, New York, N.Y. (Scott S. Levinson of counsel), for
respondent.

In a subrogation action to recover insurance benefits paid on behalf of the plaintiff's insured, nonparty Dennis Burke, Jr., the plaintiff's insured, appeals from so much of an order of the Supreme Court, Suffolk County (Pines, J.), dated August 28, 2007, as, in effect, upon reargument, denied that branch of the defendants' motion which was for summary judgment dismissing the complaint.

ORDERED that the appeal is dismissed, with costs.

Inasmuch as the nonparty-appellant is not aggrieved by the order appealed from, his appeal must be dismissed (*see* CPLR 5511).

FISHER, J.P., COVELLO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 17, 2009

VYTRA HEALTH PLANS v COLOSSAL CARTING CORP.