

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

D24223
T/kmg

_____AD3d_____

Submitted - June 8, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-04587

DECISION & ORDER

Olga Kozak, appellant,
v Deb Deb, LLC, et al., respondents.

(Index No. 22710/05)

The Edelsteins, Faegenburg & Brown, LLP, New York, N.Y. (Evan M. Landa of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Balter, J.), dated March 19, 2008, which denied her motion, denominated as one for leave to renew and reargue, but which was, in actuality, one for leave to reargue the defendants' motion pursuant to CPLR 4401, made at the close of evidence, to dismiss the complaint as a matter of law for failure to establish a prima facie case.

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

The appeal must be dismissed. The plaintiff's motion, denominated as one for leave to renew and reargue, was, in actuality, one for leave to reargue, because it was not based on new facts (*see* CPLR 2221[d][2], [e][2]; *Dess v LRM Bldrs., LLC*, 56 AD3d 716). An order denying a motion for leave to reargue is not appealable (*see Dess v LRM Bldrs., LLC*, 56 AD3d at 717).

SKELOS, J.P., COVELLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

August 18, 2009

KOZAK v DEB DEB, LLC