

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

D24789
W/kmg

_____AD3d_____

Argued - October 2, 2009

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-05259

DECISION & ORDER

Anthony Shallash, et al., appellants, v
New Island Hospital, et al., respondents.

(Index No. 5267/01)

Sullivan Papain Block McGrath & Cannavo P.C., New York, N.Y. (Brian J. Shoot and David Dean of counsel), for appellants.

Furey Kerley Walsh Matera & Cinquemani, P.C., Seaford, N.Y. (Lauren B. Bristol of counsel), for respondent New Island Hospital.

Bartlett, McDonough, Bastone & Monaghan, LLP, White Plains, N.Y. (Edward J. Guardaro, Jr., and Adonaid Casado Medina of counsel), for respondent Anthony Carlisi.

In an action to recover damages for medical malpractice, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Lally, J.), entered May 15, 2008, as granted those branches of the defendants' separate motions which were pursuant to CPLR 4404(a) to set aside the verdict on the issue of liability as contrary to the weight of the evidence and for a new trial.

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

The appeal from the order entered May 15, 2008, must be dismissed because it was superseded by a subsequent order of the same court entered January 8, 2009, made upon reargument, and because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order entered May 15, 2008, are brought up for review and have been considered on the appeal from the judgment (*see*

October 27, 2009

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SHALLASH v NEW ISLAND HOSPITAL

CPLR 5501[a][1]; *Shallash v New Island Hospital*, _____AD3d_____ [Appellate Division Docket No. 2009-03607; decided herewith]).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

2008-05259

DECISION & ORDER ON MOTION

Anthony Shallash, et al., appellants, v
New Island Hospital, et al., respondents.

(Index No. 5267/01)

Separate motions by the respondents to dismiss an appeal from an order of the Supreme Court, Nassau County, entered May 15, 2008, on the ground that the order has been superseded by an order of the same court entered January 8, 2009, made upon reargument. By decision and order on motion of this Court dated March 11, 2009, the motions were held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motions, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motions are denied as academic in light of our determination on the appeal (*see Shallash v New Island Hospital*, _____AD3d_____ [Appellate Division Docket No. 2008-05259; decided herewith]).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court