

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

D24790
W/kmg

_____AD3d_____

Argued - October 2, 2009

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

2009-00828

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 January 8, 2009, as, upon reargument, vacated its prior determination in an order entered May 15, 2008, granting those branches of the defendants' separate motions which were pursuant to CPLR 4404(a) to set aside a jury verdict on the issue of liability as contrary to the weight of the evidence and for a new trial, and thereupon 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 unsupported by legally sufficient evidence and for judgment as a matter of law.

ORDERED that the appeal from the order entered January 8, 2009, is dismissed, without costs or disbursements.

October 27, 2009

Page 1.

SHALLASH v NEW ISLAND HOSPITAL

The appeal from the order entered January 8, 2009, must be dismissed 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 that order are brought up for review and have been considered on the appeal from the judgment (*see 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.

ENTER:



James Edward Pelzer
Clerk of the Court