

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

D25572
W/kmg

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Submitted - December 3, 2009

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2008-11257

DECISION & ORDER

Dominique Pagan, etc., et al., appellants, v County
of Westchester, et al., respondents.

(Index No. 14685/04)

Harold Chetrick, P.C., New York, N.Y., for appellants.

Robert G. Rafferty, Rye Brook, N.Y. (Vincent R. Rippa of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Westchester County (Smith, J.), dated August 28, 2008, which, *inter alia*, upon precluding the plaintiffs' expert from testifying at trial, granted the defendants' oral application, in effect, to dismiss the complaint.

ORDERED that on the Court's own motion, the notice of appeal from the order dated August 28, 2008, is deemed to be an application for leave to appeal from that order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed, with costs.

Under the facts of this case, the Supreme Court properly granted the defendant's oral application, in effect, to dismiss the complaint.

January 5, 2010

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The plaintiffs' remaining contention is without merit.

COVELLO, J.P., ANGIOLILLO, LOTT and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court