

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

D26800
G/kmg

_____AD3d_____

Argued - February 25, 2010

A. GAIL PRUDENTI, P.J.
RUTH C. BALKIN
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2008-01681

DECISION & ORDER

Broughan E. Gorey, respondent-appellant,
v Allion Healthcare, Inc., appellant-respondent.

(Index No. 18346/04)

Cartier, Bernstein, Auerbach & Dazzo, P.C., Patchogue, N.Y. (Robert Steinberg of counsel), for appellant-respondent.

David Schlachter, Uniondale, N.Y., for respondent-appellant.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals, as limited by its brief, from stated portions of an order of the Supreme Court, Suffolk County (Pines, J.), dated January 7, 2008, and the plaintiff cross-appeals, as limited by his notice of appeal and brief, from stated portions of the same order.

ORDERED that the appeal and cross appeal are dismissed, without costs or disbursements.

The appeal and cross appeal from the order 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 and cross appeal from the order are brought up for review and have been considered on the appeal and cross appeal from the judgment (*see Gorey v Allion Healthcare, Inc.*, _____AD3d_____ [Appellate Division Docket No. 2008-09537; decided herewith]; CPLR 5501[a][1]).

PRUDENTI, P.J., BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:


James Edward Pelzer

April 6, 2010

GOREY v ALLION HEALTHCARE, INC.

Clerk of the Court

April 6, 2010

GOREY v ALLION HEALTHCARE, INC.