

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

D26821
O/kmg

_____AD3d_____

Argued - March 3, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2009-04020

DECISION & ORDER

Thomas M. McElroy, appellant, v Gail Bernstein,
et al., respondents.

(Index No. 8699/06)

Antin, Ehrlich & Epstein, P.C., New York, N.Y. (Scott W. Epstein and Anthony V. Gentile of counsel), for appellant.

Tarshis & Hammerman, LLP (Carole R. Finocchio, New York, N.Y. [Marie R. Hodukavich], of counsel), for respondents Gail Bernstein and Herbert Resnick.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Satterfield, J.), dated March 17, 2009, which denied, as academic, his motion for leave to serve an amended complaint.

ORDERED that the order is affirmed, with costs.

Inasmuch as we are affirming the Supreme Court's order awarding summary judgment to the defendants in this action (*see McElroy v Bernstein*, _____AD3d_____, Appellate Division Docket No. 2009-04022 [decided herewith]), we find that the Supreme Court properly denied, as academic, the plaintiff's motion for leave to serve an amended complaint adding his wife as a plaintiff asserting derivative claims (*see JP Foodservice Distributions, Inc. v PricewaterhouseCoopers LLP*, 33 AD3d 316, 317; *cf. Long Is. Sav. Bank v Savage*, 116 AD2d 512, 516, *affd* 69 NY2d 751).

FISHER, J.P., COVELLO, LOTT and SGROI, JJ., concur.

ENTER:


James Edward Pelzer

April 13, 2010

McELROY v BERNSTEIN

Clerk of the Court

April 13, 2010

McELROY v BERNSTEIN