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

D31735
Y/prt

_____AD3d_____ Argued - May 5, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-06787 DECISION & ORDER
2010-09770

Rupert Singh, plaintiff-appellant-respondent, v
Lincoln Management, LLC, et al., defendants
third-party plaintiffs-appellants-respondents;
Allen Daniel Framing Corp., third-party
defendant-respondent.

(Index No. 24511/07)

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Marcia K. Raicus of counsel), for defendants third-party plaintiffs-appellants-respondents.

Gregory J. Allen (Linda A. Stark, New York, N.Y., of counsel), for third-party defendant-respondent.

In an action to recover damages for personal injuries, (1) the plaintiff appeals from an order of the Supreme Court, Queens County (Taylor, J.), entered May 27, 2010, and the defendants third-party plaintiffs separately appeal from so much of the same order as denied, as academic, the third-party defendant's renewed motion for summary judgment dismissing the third-party complaint, and (2) the defendants third-party plaintiffs also appeal from a judgment of the same court entered August 16, 2010, which, upon the order, dismissed the complaint.

ORDERED that the appeals are dismissed, without costs or disbursements.

The appeal by the plaintiff from the order must be dismissed for failure to perfect the same in accordance with the rules of this Court (*see* 22 NYCRR 670.8[c], [e]). The appeal by the

defendants third-party plaintiffs from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with entry of the judgment in the action (*see Matter of Aho,* 39 NY2d 241, 248). The issues raised on the appeal by the defendants third-party plaintiffs from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

However, the appeal by the defendants third-party plaintiffs from the judgment must be dismissed, as they are not aggrieved thereby. They received all the relief sought by them on their cross motion for summary judgment dismissing the complaint, the third-party defendant's renewed motion for summary judgment dismissing the third-party complaint was denied as academic, and the third-party complaint has not been dismissed by the Supreme Court (*see* CPLR 5511). That the order brought up for review on the appeal from the judgment may contain language or reasoning which the defendants third-party plaintiffs deem adverse to their interests does not furnish them with a basis for taking an appeal (*see Pennsylvania Gen. Ins. Co. v Austin Powder Co.,* 68 NY2d 465, 472-473).

COVELLO, J.P., CHAMBERS, LOTT and MILLER, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court