

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

D31907
H/prt

_____AD3d_____

Submitted - June 10, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-01705

DECISION & ORDER

Laurie Braverman, et al., respondents, v Bendiner & Schlesinger, Inc., appellant, et al., defendant.

(Index No. 4056/06)

Kaufman Borgeest & Ryan LLP, New York, N.Y. (Dennis J. Dozis and Jacqueline Mandell of counsel), for appellant.

Robert N. Isseks, Middletown, N.Y., and Bloom & Bloom, P.C., New Windsor, N.Y. (Kevin Bloom of counsel), for respondents (one brief filed).

In a putative class action to recover damages for personal injuries, the defendant Bendiner & Schlesinger, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Rockland County (Walsh, J.), dated January 18, 2011, as denied its motion for a protective order preventing the further examination before trial of Dr. William Closson.

ORDERED that the appeal is dismissed, with costs to the respondents.

No appeal as of right lies from an order determining an application to review rulings made at an examination before trial (*see Nappi v North Shore Univ. Hosp.*, 31 AD3d 509, 510-511; *Scalone v Phelps Mem. Hosp. Ctr.*, 184 AD2d 65, 69). Similarly, the denial of a protective order preventing the further examination of a witness is not appealable as of right, since that is in the nature of an order on application to review objections raised at an examination before trial (*see Robinson v Pediatric Assoc. of Irwin Ave.*, 307 AD2d 1029, 1030; *Efdey Elec. Contrs. v Melita*, 151 AD2d 640, 641; *Miller v United Parcel Serv.*, 143 AD2d 820, 821). The defendant Bendiner & Schlesinger, Inc., has not sought leave to appeal, and there is nothing in the record which would

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warrant granting leave to appeal on the Court's own motion (*see Daniels v Fairfield Presidential Mgt. Corp.*, 43 AD3d 386, 387; *Nappi v North Shore Univ. Hosp.*, 31 AD3d at 511; *cf. Scalone v Phelps Mem. Hosp. Ctr.*, 184 AD2d at 69; *Hughson v St. Francis Hosp. of Port Jervis*, 93 AD2d 491, 495).

DILLON, J.P., COVELLO, CHAMBERS and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court