

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

D57074
G/htr

_____AD3d_____

Argued - September 7, 2018

RUTH C. BALKIN, J.P.
SANDRA L. SGROI
HECTOR D. LASALLE
BETSY BARROS, JJ.

2016-03146

DECISION & ORDER

Robert Larsen, respondent, v Frank Ciolli, doing
business as Grimaldi's Pizzeria, appellant, et al.,
defendants.

(Index No. 150771/13)

McCue Sussmane Zapfel Cohen & Youbi, P.C., New York, NY (Kenneth S.
Sussmane of counsel), for appellant.

Gerald J. McMahon, New York, NY, for respondent.

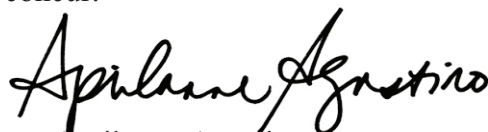
In an action, inter alia, to recover damages for breach of contract, the defendant Frank Ciolli, doing business as Grimaldi's Pizzeria, appeals from an order of the Supreme Court, Richmond County (Charles M. Troia, J.), dated January 15, 2016. The order denied that defendant's motion for summary judgment dismissing the breach of contract and fraud causes of action insofar as asserted against him.

ORDERED that the appeal is dismissed, without costs or disbursements.

The appeal must be dismissed because the right of direct appeal therefrom terminated with the entry of a judgment in the action dated November 30, 2016 (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order, to the extent that they have not been rendered academic, are brought up for review and have been considered on the appeal from the judgment (*Larsen v Ciolli*, _____AD3d _____ [Appellate Division Docket No. 2016-13318; decided herewith]; *see* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d at 248).

BALKIN, J.P., SGROI, LASALLE and BARROS, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

October 31, 2018

LARSEN v CIOLLI, doing business as GRIMALDI'S PIZZERIA