

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Aberbach-Marolda v. Cherner

2026 NY Slip Op 02088 · No. 2019-02951 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, dismissed an appeal from an order denying the defendant's motion to vacate the note of issue and trial readiness order. The court held that the right to directly appeal the order terminated upon entry of judgment, and that the issues were reviewable on the appeal from the judgment.

CASE DETAILS

|                       |                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                       |
| WRITING FOR THE COURT | Mark C. Dillon, J.P.; Betsy Barros, J.; Paul Wooten, J.; William G. Ford, J.                                                                                 |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                       |
| DECIDED               | April 8, 2026                                                                                                                                                |
| DOCKET                | 2019-02951                                                                                                                                                   |
| DISPOSITION           | dismissed                                                                                                                                                    |
| PROCEDURAL POSTURE    | Defendant appealed from an order denying his motion to vacate the note of issue and trial readiness order in an action including a breach-of-contract claim. |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                    |
| PARTIES               | Daniel Cherner v. Susanne Aberbach-Marolda                                                                                                                   |

TOPICS

- final judgment rule
- appellate procedure
- appellate jurisdiction
- civil procedure
- breach of contract

PRACTICE AREAS

- appellate procedure
- civil procedure
- contracts

## QUESTIONS PRESENTED

1. Whether the defendant could maintain a direct appeal from an order denying his motion to vacate the note of issue and trial readiness order after entry of the judgment in the action.

## HOLDINGS

1. The direct appeal from the order had to be dismissed because entry of the judgment terminated the right of direct appeal from the order; the issues raised were properly brought up for review on the appeal from the judgment.

## FACTUAL BACKGROUND

The underlying action included claims to recover damages for breach of contract. The defendant moved to vacate the note of issue and trial readiness order, and the Supreme Court denied that motion. The defendant appealed from that order, while a related appeal from the judgment was decided concurrently.

## PROCEDURAL HISTORY

The Supreme Court, Westchester County, denied the defendant's motion to vacate the note of issue and trial readiness order. The defendant appealed, but the Appellate Division dismissed the appeal because entry of the judgment terminated the right of direct appeal from the earlier order; the issues raised were reviewable on the appeal from the judgment.

## DISPOSITION

dismissed

## CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Aberbach-Marolda v. Cherner, \_\_\_ AD3d \_\_\_ [Appellate Division Docket No. 2019-09826; decided herewith]

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