

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]

OPINION

Aberbach-Marolda v. Cherner 2026 NY Slip Op 02088

PER CURIAM.

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NY Slip Op 02088

April 8, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Susanne Aberbach-Marolda, etc., respondent, et al., plaintiff,

v

Daniel Cherner, appellant.

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

Decided on April 8, 2026

2019-02951, (Index No. 58495/16)

Mark C. Dillon, J.P.

Betsy Barros

Paul Wooten

William G. Ford, JJ.

Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY (Brian J. Isaac of counsel), for appellant.

Susanne Aberbach-Marolda, Pleasantville, NY, respondent pro se.

[*1]

DECISION & ORDER

In an action, inter alia, to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Westchester County (Joan B. Lefkowitz, J.), dated March 6, 2019. The order denied the defendant's motion to vacate the note of issue and trial readiness order. Justice Ford has been substituted for former Justice Zayas (*see* 22 NYCRR 1250.1[b]).

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

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see* *Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d at 248; *Aberbach-Marolda v Cherner*, __ AD3d __ [Appellate Division Docket No. 2019-09826; decided herewith]).

DILLON, J.P., BARROS, WOOTEN and FORD, JJ., concur.

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