

**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.

OPINION

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PER CURIAM.

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Aberbach-Marolda v Cherner

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April 8, 2026

Appellate Division, Second Department

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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.

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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