

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

Aberbach-Marolda v. Cherner

2026 NY Slip Op 02086 (Supreme Court of the State of New York Appellate Division Second Department 2026)  
· No. 2019-01115 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department dismissed the defendant's appeal from an order denying discovery-related relief in an action involving alleged breach of contract. The court held that the examination-before-trial ruling was not appealable as of right and that the right to directly appeal the remaining portions terminated upon entry of judgment; the issues were reviewable on appeal from the judgment.

CASE DETAILS

|                       |                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second 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 Department                                                                          |
| DECIDED               | April 8, 2026                                                                                                                                          |
| DOCKET                | 2019-01115                                                                                                                                             |
| DISPOSITION           | dismissed                                                                                                                                              |
| PROCEDURAL POSTURE    | Defendant appealed from an order denying portions of his motion seeking discovery-related relief in an action including claims for breach of contract. |
| PRECEDENTIAL VALUE    | Published                                                                                                                                              |
| PARTIES               | Daniel Cherner v. Susanne Aberbach-Marolda                                                                                                             |

TOPICS

- appellate procedure
- interlocutory appeal
- discovery dispute
- civil procedure
- breach of contract

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the portions of the order concerning an examination before trial were appealable as of right.
2. Whether the defendant retained a direct right to appeal the remaining portions of the interlocutory order after entry of judgment in the action.

## HOLDINGS

1. An order portion that effectively seeks rulings concerning an examination before trial is not appealable as of right.
2. The right to a direct appeal from the remaining portions of the interlocutory order terminates upon entry of judgment in the action, although the issues may be reviewed on appeal from the judgment.

## KEY QUOTATIONS

*“The appeal from the order must be dismissed because the portion of the order which, in effect, seeks rulings on an examination before trial is not appealable as of right, and the right of direct appeal from the remaining portions of the order terminated with the entry of the judgment in the action.”* ([\*1])

## FACTUAL BACKGROUND

The underlying action included claims to recover damages for breach of contract. The defendant sought discovery-related relief, including authorizations for Internet providers to release emails, a new deposition, deposition fees and costs, a sworn statement concerning malpractice-insurance claims, and telephone records. The lower court denied the challenged portions of that motion.

## PROCEDURAL HISTORY

The Supreme Court, Westchester County, denied portions of the defendant's motion to compel email authorizations, a new deposition, deposition fees and costs, a sworn malpractice-insurance-claims statement, and telephone records. The defendant appealed from that order. The Appellate Division dismissed the appeal because the examination-before-trial rulings were not appealable as of right and direct appeal from the remaining portions terminated upon entry of judgment; the issues were reviewable on the appeal from the judgment.

## DISPOSITION

dismissed

## CASES CITED

- Cruz v Roman Catholic Church for Most Holy Trinity, 222 AD2d 395
- Matter of Aho, 39 NY2d 241, 248
- Aberbach-Marolda v Cherner, Appellate Division Docket No. 2019-09826

## OPINION

Aberbach-Marolda v. Cherner 2026 NY Slip Op 02086

PER CURIAM.

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NY Slip Op 02086</p> <p>April 8, 2026</p> <p>Appellate Division, Second Department</p>  
<p>Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</p>  
<p>This decision is uncorrected and subject to revision before publication in the Official Reports.  
</p> </div> <div> <p>Susanne Aberbach-Marolda, etc., respondent, et al., plaintiff,</p>  
<p>v</p> <p>Daniel Cherner, appellant.</p> </div> <p>Supreme Court of the State of New  
York, Appellate Division, Second Judicial Department</p> <p>Decided on April 8, 2026</p>  
<p>2019-01115, (Index No. 58495/16)</p> <p>Mark C. Dillon, J.P.</p> <p>Betsy Barros</p>  
<p>Paul Wooten</p> <p>William G. Ford, JJ.</p> <div> <p>Pollack, Pollack, Isaac &  
DeCicco, LLP, New York, NY (Brian J. Isaac of counsel), for appellant.</p> <p>Susanne  
Aberbach-Marolda, Pleasantville, NY, respondent pro se.</p> </div> <span>[\*1]</span>  
<p>DECISION & ORDER</p> <p>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 December 17, 2018. The order, insofar as appealed from, denied those  
branches of the defendant's motion which were to compel the plaintiff Susanne-Aberbach Marolda  
to provide authorizations for Internet providers to release certain emails, to appear for a new  
deposition and to pay the fees and costs associated with her deposition, to provide a sworn  
statement detailing all claims made on her malpractice insurance policy over a certain period of  
time, and to produce certain telephone records. Justice Ford has been substituted for former Justice  
Zayas (<i>see</i> 22 NYCRR 1250.1[b]).</p> <p>ORDERED that the appeal is dismissed,  
without costs or disbursements.</p> <p>The appeal from the order must be dismissed because the  
portion of the order which, in effect, seeks rulings on an examination before trial is not appealable  
as of right (<i>see Cruz v Roman Catholic Church for Most Holy Trinity</i>, 222 AD2d 395), and  
the right of direct appeal from the remaining portions of the order terminated with the entry of the  
judgment in the action (<i>see Matter of Aho</i>, 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 (<i>see</i> CPLR 5501[a][1]; <i>Matter of Aho</i>, 39 NY2d at 248; <i>Aberbach-  
Marolda v Cherner</i>, \_\_ AD3d \_\_ [Appellate Division Docket No. 2019-09826; decided

herewith]).</p> <p>DILLON, J.P., BARROS, WOOTEN and FORD, JJ., concur.</p>  
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