

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

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