

837 N.Y.S.2d 889

42 A.D.3d 924

Mary Simet, Appellant

v.

**The Coleman Company, Inc., et al., Defendants, and
David E. Lehman et al., Respondents. (Appeal No. 2.)**

[42 A.D.3d 925]2007-05872

Supreme Court of New York, Fourth Department

July 6, 2007

COUNSEL

Connors & Vilardo, LLP, Buffalo (Randall D. White of counsel), for plaintiff-appellant.

Costello, Cooney & Fearon, PLLC, Syracuse (Maureen G. Fatcheric of counsel), for defendants-respondents David E. Lehman and Linda Lehman.

Chelus, Herdzik, Speyer, Monte & Pajak, P.C., Buffalo (Scott R. Orndoff of counsel), for defendant-respondent Randy Newman.

OPINION

Appeal from an order of the Supreme Court, Erie County (Christopher J. Burns, J.), entered December 21, 2005 in a personal injury action. The order granted the motion of defendants David E. Lehman and Linda Lehman and the cross motion of defendant Randy Newman for summary judgment dismissing the complaint and cross claims against them.

It is hereby ordered that said appeal insofar as it concerns the motion of defendants David E. Lehman and Linda Lehman be and the same hereby is unanimously dismissed (*see Hughes v Nussbaumer, Clarke & Velzy*, 140 A.D.2d 988 [1988]; *Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 A.D.2d 566, 567 [1978]; *see also* CPLR 5501 [a] [1]) and the order is affirmed without costs.

Same memorandum as in *Simet v Coleman Co., Inc.* (42 AD3d 925 [2007]).

Present--Scudder, P.J., Centra, Lunn and Fahey, JJ.