

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
ELZA GARZON,

Index #: 700736/2015

Plaintiff,

**NOTICE  
OF APPEAL**

-against-

STEVEN BATASH , STEVEN BATASH, M.D.,  
P.C.,

Defendants.  
-----X

**PLEASE TAKE NOTICE** that the above named plaintiffs hereby appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from an Order of the Supreme Court, Queens County (Hon. Joseph J. Esposito), dated September 25, 2017, and entered September 28, 2017, which granted Defendant's motion to set aside the damages verdict for past and future pain and suffering.

Dated: New York, New York  
October 25, 2017

Yours, etc.,

GAIR, GAIR, CONASON, RUBINOWITZ, BLOOM,  
HERSHENHORN, STEIGMAN & MACKAUF  
Attorneys for Plaintiff  
80 Pine Street  
New York, New York 10005  
(212) 943-1090

By:   
D. ALLEN ZACHARY, ESQ.

TO: Keller, O'Reilly & Watson, P.C.  
Attorneys for Defendants  
STEVEN BATASH, STEVEN BATASH, M.D., P.C.,  
242 Crossways Park West  
Woodbury, New York 11797

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

Form A - Request for Appellate Division Intervention - Civil

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

<p>Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.</p> <p style="font-size: 1.2em; margin-top: 20px;">ELZA GARZON,</p> <p style="text-align: center; margin-top: 20px;">Plaintiff,</p> <p style="text-align: center; margin-top: 20px;">-against-</p> <p style="font-size: 1.2em; margin-top: 20px;">STEVEN BATASH and STEVEN BATASH, MD, PC,</p> <p style="text-align: center; margin-top: 20px;">Defendant.</p>	<p style="text-align: center; background-color: #cccccc;"><b>For Court of Original Instance</b></p> <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <p style="text-align: center; font-size: 0.8em;">Date Notice of Appeal Filed</p>
<p style="text-align: center; background-color: #cccccc;"><b>For Appellate Division</b></p> <div style="border: 1px solid black; height: 80px; margin-top: 5px;"></div>	

<p><b>Case Type</b></p> <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<p><b>Filing Type</b></p> <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
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**Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.**

<p><b>A. Administrative Review</b></p> <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 Licenses <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other	<p><b>D. Domestic Relations</b></p> <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children - Support <input type="checkbox"/> 4 Children - Custody/Visitation <input type="checkbox"/> 5 Children - Terminate Parental Rights <input type="checkbox"/> 6 Children - Abuse/Neglect <input type="checkbox"/> 7 Children - JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residence <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other	<p><b>F. Prisoners</b></p> <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other	<p><b>I. Torts</b></p> <input type="checkbox"/> 1 Assault, Battery, False Imprisonment <input type="checkbox"/> 2 Conversion <input type="checkbox"/> 3 Defamation <input type="checkbox"/> 4 Fraud <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress <input type="checkbox"/> 6 Interference with Contract <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process <input checked="" type="checkbox"/> 8 Malpractice <input type="checkbox"/> 9 Negligence <input type="checkbox"/> 10 Nuisance <input type="checkbox"/> 11 Products Liability <input type="checkbox"/> 12 Strict Liability <input type="checkbox"/> 13 Trespass and/or Waste <input type="checkbox"/> 14 Other
<p><b>B. Business &amp; Other Relationships</b></p> <input type="checkbox"/> 1 Partnership/Joint Venture <input type="checkbox"/> 2 Business <input type="checkbox"/> 3 Religious <input type="checkbox"/> 4 Not-for-Profit <input type="checkbox"/> 5 Other	<p><b>E. Miscellaneous</b></p> <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input type="checkbox"/> 3 Declaratory Judgment <input type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input type="checkbox"/> 6 Other	<p><b>G. Real Property</b></p> <input type="checkbox"/> 1 Condemnation <input type="checkbox"/> 2 Determine Title <input type="checkbox"/> 3 Easements <input type="checkbox"/> 4 Environmental <input type="checkbox"/> 5 Liens <input type="checkbox"/> 6 Mortgages <input type="checkbox"/> 7 Partition <input type="checkbox"/> 8 Rent <input type="checkbox"/> 9 Taxation <input type="checkbox"/> 10 Zoning <input type="checkbox"/> 11 Other	<p><b>J. Wills &amp; Estates</b></p> <input type="checkbox"/> 1 Accounting <input type="checkbox"/> 2 Discovery <input type="checkbox"/> 3 Probate/Administration <input type="checkbox"/> 4 Trusts <input type="checkbox"/> 5 Other
<p><b>C. Contracts</b></p> <input type="checkbox"/> 1 Brokerage <input type="checkbox"/> 2 Commercial Paper <input type="checkbox"/> 3 Construction <input type="checkbox"/> 4 Employment <input type="checkbox"/> 5 Insurance <input type="checkbox"/> 6 Real Property <input type="checkbox"/> 7 Sales <input type="checkbox"/> 8 Secured <input type="checkbox"/> 9 Other	<p><b>H. Statutory</b></p> <input type="checkbox"/> 1 City of Mount Vernon Charter § § 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law § § 128 or 170 <input type="checkbox"/> 6 Other		

## Appeal

Paper Appealed From (check one only):

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Amended Decree   | <input type="checkbox"/> Determination          | <input checked="" type="checkbox"/> Order   | <input type="checkbox"/> Resettled Order  |
| <input type="checkbox"/> Amended Judgment | <input type="checkbox"/> Finding                | <input type="checkbox"/> Order & Judgment   | <input type="checkbox"/> Ruling           |
| <input type="checkbox"/> Amended Order    | <input type="checkbox"/> Interlocutory Decree   | <input type="checkbox"/> Partial Decree     | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Decision         | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree   |   |
| <input type="checkbox"/> Decree           | <input type="checkbox"/> Judgment               | <input type="checkbox"/> Resettled Judgment |   |

Court: SUPREME

County: QUEENS

Dated: September 25, 2017

Entered: September 28, 2017

Judge (name in full): Joseph J. Esposito

Index No.: 700736/2015

Stage:  Interlocutory  Final  Post-FinalTrial:  Yes  No If Yes:  Jury  Non-Jury

## Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case?  Yes  No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals?  Yes  No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

## Original Proceeding

Commenced by:  Order to Show Cause  Notice of Petition  Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

## Proceeding Transferred Pursuant to CPLR 7804(g)

Court:

County:

Judge (name in full):

Order of Transfer Date:

## CPLR 5704 Review of Ex Parte Order

Court:

County:

Judge (name in full):

Dated:

## Description of Appeal, Proceeding or Application and Statement of Issues

**Description:** If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Plaintiff, Elza Garzon, hereby appeals to the Appellate Division, Second Judicial Department, from an Order of the Honorable Joseph J. Esposito, dated 9/25/17 and entered on 9/28/17, which granted defendant Defendants' motion to set aside the damages verdict for past and future pain and suffering.

**Amount:** If an appeal is from a money judgment, specify the amount awarded.

**Issues:** Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

Whether the Court abused its discretion in reducing the damages awarded by the jury's verdict for plaintiff's past and future pain and suffering.

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Issues Continued:

**Use Form B for Additional Appeal Information**

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	ELZA GARZON	Plaintiff	Appellant
2	STEVEN BATASH	Defendant	Respondent
3	STEVEN BATASH, MD, PC	Defendant	Respondent
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Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf

Address: 80 Pine Street, 34th Floor

City: New York State: NY Zip: 10005 Telephone No.: (212) 943-1090

Attorney Type: [X] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C): 1

Attorney/Firm Name: Keller, O'Reilly & Watson, PC

Address: 242 Crossways Park West

City: Westbury State: NY Zip: 11797 Telephone No.: (516) 496-1919

Attorney Type: [X] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C): 2 3

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: [ ] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: [ ] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: [ ] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: [ ] Retained [ ] Assigned [ ] Government [ ] Pro Se [ ] Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

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