

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

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Submitted - November 6, 2006

GLORIA GOLDSTEIN, J.P.  
PETER B. SKELOS  
ROBERT J. LUNN  
JOSEPH COVELLO, JJ.

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2006-01571

DECISION & ORDER

Steven L. Herrick, etc., respondent, v Christina  
Lyon, appellant.

(Index No. 12078/02)

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Glenn J. Wurzel, Hempstead, N.Y., for appellant.

Steven L. Herrick, Albany, N.Y., respondent pro se.

In an action to recover legal fees, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Woodard, J.), entered November 7, 2005, as denied that branch of her motion which was, in effect, to dismiss the amended complaint pursuant to CPLR 3211(a)(5) on the ground that the action is barred by the doctrine of res judicata.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the defendant's contention, the judgment entered in this matter following her prior successful appeal was not a final adjudication of the matter precluding service of an amended complaint, as the dismissal of the complaint was with leave to replead (*see Herrick v Lyon*, 7 AD3d 571, 572). Rather, the purpose of the judgment was merely to direct payment of the appeal costs and disbursements as a money judgment (*see CPLR 2222*). Accordingly, it is not res judicata with respect to the entire merits of the case, but only as to the issue that was actually decided (*see Whitman v Whitman*, 95 AD2d 882; *cf. Aard-Vark Agency, Ltd. v Prager*, 8 AD3d 508).

December 19, 2006

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Consequently, the Supreme Court properly denied the defendant's motion to dismiss the amended complaint pursuant to CPLR 3211(a)(5).

GOLDSTEIN, J.P., SKELOS, LUNN and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court