

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

D13497
O/cb

_____AD3d_____

Argued - December 12, 2006

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2005-05934

DECISION & ORDER

North Fork Preserve, Inc., et al., respondents, v
Myron Kaplan, et al., appellants.

(Index No. 27167/04)

Rosenberg Calica & Birney, LLP, Garden City, N.Y. (Ronald J. Rosenberg of counsel), for appellants.

Stein Law, P.C., Northport, N.Y. (Mitchell A. Stein of counsel), for respondents.

In a shareholder's derivative action, inter alia, to recover damages for fraud, waste of corporate assets, and breach of fiduciary duty, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Emerson, J.), dated May 6, 2005, as denied those branches of their cross motion which were for an award of an attorneys' fee and costs, and for the imposition of sanctions pursuant to 22 NYCRR 130-1.1 against the plaintiffs and their attorney.

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

Although the plaintiffs and their attorney made five motions, all by orders to show cause, within a period of five months, the motions did not seek the same relief. Moreover, there was a legal and factual basis for each motion. Consequently, the Supreme Court providently exercised its discretion in denying those branches of the defendants' cross motion which were for an award of an attorneys' fee and costs, and for the imposition of sanctions pursuant to 22 NYCRR 130-1.1

January 23, 2007

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against the plaintiffs and their attorney (*see Kovach v Hurlburt*, 288 AD2d 727, 729; *Reid & Priest v Realty Asset Group*, 250 AD2d 380; *Watson v City of New York*, 178 AD2d 126, 127-128).

RIVERA, J.P., SPOLZINO, RITTER and ANGIOLILLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court