

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

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_____AD3d_____

Argued - October 22, 2007

STEPHEN G. CRANE, J.P.
GLORIA GOLDSTEIN
ANITA R. FLORIO
MARK C. DILLON, JJ.

2007-00970

DECISION & ORDER

Norma Reshevsky, et al., appellants, v
United Water New York, Inc., respondent.

(Index No. 4323/01)

Norma Reshevsky, Malke Reshevsky, Joel Reshevsky, and Sylvia Reshevsky, Spring Valley, N.Y., appellants pro se (one brief filed).

Heidell, Pittoni, Murphy & Bach, LLP, New York, N.Y. (Daryl Paxson and Daniel S. Ratner of counsel), for respondent.

In an action to recover damages for personal injuries and injury to property, the plaintiffs appeal from an order of the Supreme Court, Rockland County (Smith, J.), entered December 19, 2006, which denied their motion for leave to renew and reargue the defendant's prior motion for summary judgment, which had been granted in an order of the same court dated December 6, 2005.

ORDERED that the appeal from so much of the order entered December 19, 2006, as denied that branch of the plaintiffs' motion which was for reargument is dismissed; and it is further,

ORDERED that order entered December 19, 2006, is affirmed insofar as reviewed; and it is further,

ORDERED that the defendant is awarded one bill of costs.

The appeal from so much of the order entered December 19, 2006, as denied that

December 4, 2007

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branch of the plaintiffs' motion which was for reargument must be dismissed, as no appeal lies from an order denying reargument (*see Crown v Sayah*, 31 AD3d 367; *Koehler v Town of Smithtown*, 305 AD2d 550, 551).

Review of the order entered December 19, 2006, is further limited by the dismissal, for lack of prosecution, of the plaintiffs' prior appeal from the original order dated December 6, 2005, by decision and order on motion of this Court dated January 11, 2007. As a general rule, we do not consider any issue raised on a subsequent appeal that could have been raised in an earlier appeal which was dismissed for lack of prosecution (*see Bray v Cox*, 38 NY2d 350), although we have the inherent jurisdiction to do so (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750, 756; *St. Claire v Gaskin*, 295 AD2d 336, 337). In the instant case, there is no basis for such consideration.

Given this limited review, we affirm the denial of renewal on the ground that the plaintiffs failed to offer a reasonable justification for failing to present the evidence offered in support of renewal in their opposition to the defendant's original motion (*see CPLR 2221[e]*; *Financial Pac. Leasing v D&D Wire*, 44 AD3d 706; *State Farm Mut. Auto. Ins. Co. v Hertz Corp.*, 43 AD3d 907). The plaintiffs' contention that they "subsequently realized that a qualified expert, a licensed plumber, was needed" to interpret the evidence does not constitute a reasonable justification since the plaintiffs were represented by counsel at the time the original motion was made and submitted expert opinion evidence in opposition to the defendant's original motion. In any event, the affidavit of the plaintiffs' licensed plumber was insufficient to change the prior determination (*see State Farm Mut. Auto. Ins. Co. v Hertz Corp.*, 43 AD3d 907).

CRANE, J.P., GOLDSTEIN, FLORIO and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court