

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

D20360
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_____AD3d_____

Submitted - April 14, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2007-08709

DECISION & ORDER

Robert G.A. Thompson, et al., plaintiffs-respondents,
et al., plaintiffs, v 76 Corp., d/b/a Club New York,
et al., defendants, Jamal Barrow, a/k/a “Shyne,”
defendant-respondent; DeSimone, Aviles, Shorter
& Oxamendi, LLP, nonparty-appellant.

(Index No. 50106/99)

DeSimone, Aviles, Shorter & Oxamendi, LLP, New York, N.Y. (Louise M. Cherkis and Ralph DeSimone of counsel), nonparty-appellant pro se.

Debra S. Reiser, New York, N.Y., for plaintiff-respondent Natania Reuben.

Dinkes & Schwitzer, New York, N.Y. (Souren Israelyan and Beth Diamond of counsel), for plaintiff-respondent Julius Jones.

In an action to recover damages for personal injuries, nonparty DeSimone, Aviles, Shorter & Oxamendi, LLP, the former attorney for the defendant Jamal Barrow, a/k/a “Shyne,” appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated February 28, 2007, which denied its motion to release to it the sum of \$43,000, as an attorney’s fee, from certain funds held in escrow pursuant to temporary restraining orders contained in two orders to show cause dated November 1, 2004, and November 3, 2004, respectively, and a preliminary injunction order dated March 16, 2005.

ORDERED that the order dated February 28, 2007, is affirmed, without costs or disbursements.

September 16, 2008

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On the record presented, we cannot conclude that the Supreme Court improvidently exercised its discretion in denying the motion of nonparty DeSimone, Aviles, Shorter & Oxamendi, LLP, to release sums to it from certain funds that are the subject of temporary restraining orders contained in two orders to show cause and a preliminary injunction order restraining their distribution, or that the court was bound to release the funds pursuant to the law of the case doctrine (*see Thompson v 76 Corp., d/b/a Club New York*, _____AD3d_____ [Appellate Division Docket No. 2007-03002, decided herewith]).

FISHER, J.P., COVELLO, ANGIOLILLO and BELEN, 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