

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

D22621
W/kmg

_____AD3d_____

Submitted - February 26, 2009

PETER B. SKELOS, J.P.
MARK C. DILLON
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2007-11595

DECISION & ORDER

David Berry, et al., appellants-respondents,
v Randolph L. Williams, etc., et al., respondents-appellants.

(Index No. 4973/00)

Thomas P. Halley, Poughkeepsie, N.Y., for appellants-respondents.

John P. Kingsley, P.C., Catskill, N.Y., for respondents-appellants.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal from stated portions of an order of the Supreme Court, Dutchess County (Sproat, J.), entered November 23, 2007, which, sua sponte, among other things, directed them to reimburse various sums of money to the defendants, and the defendants cross-appeal from stated portions of the same order.

ORDERED that the appeal and cross appeal are dismissed, without costs or disbursements.

No appeal lies as of right from an order entered sua sponte (*see* CPLR 5701[a]), and neither the plaintiffs nor the defendants sought leave to appeal from the order entered November 23, 2007 (*see* CPLR 5701[c]). Under the circumstances of this case, we decline to grant leave to appeal (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750, 757; *Matter of City of New York, S. Jamaica I Urban Renewal Area*, 41 AD3d 595; *Russo v Russo*, 275 AD2d 406; *Matter of Jennie EE.*, 210 AD2d 744, 745).

SKELOS, J.P., DILLON, COVELLO and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer

March 31, 2009

BERRY v WILLIAMS

Clerk of the Court

March 31, 2009

BERRY v WILLIAMS