

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

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_____AD3d_____

Argued - May 28, 2010

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2009-03255

DECISION & ORDER

601 Realty Corp., et al., respondents, v Conway,
Farrell, Curtin & Kelly, P.C., et al., appellants, et al.,
defendants (and a third-party action).

(Index No. 9103/07)

McManus, Collura & Richter, P.C., New York, N.Y. (Scott C. Tuttle of counsel), for
appellants.

Gleich, Siegel & Farkas, Great Neck, N.Y. (Jonathan H. Freiburger of counsel), for
respondents.

In action to recover damages for legal malpractice, the defendants Conway, Farrell,
Curtin & Kelly, P.C., Angela Pantony, and Richard W. Dawson appeal from an order of the Supreme
Court, Nassau County (Phelan, J.), entered March 20, 2009, which granted the plaintiffs' motion
pursuant to 22 NYCRR 130-1.1 for an award of sanctions against them, directed a hearing to
determine the amount to be awarded, and denied their cross motion for leave to reargue their prior
motion to compel the plaintiffs to respond to items 3 and 6 in their notice for discovery and inspection
dated January 11, 2008.

ORDERED that the appeal from so much of the order as denied the appellants' cross
motion for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it
is further,

ORDERED that order is reversed insofar as reviewed, on the law, and the plaintiffs'
motion is denied; and it is further,

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ORDERED that the appellants are awarded one bill of costs.

Under the circumstances of this case, the conduct of the appellants after the Supreme Court declined to sign their order to show cause had a good faith basis and did not constitute frivolous conduct (*see Dank v Sears Holding Mgt. Corp.*, 69 AD3d 557, 558; *Yenom Corp. v 155 Wooster St. Inc.*, 33 AD3d 67, 70; *Matter of Wecker v D'Ambrosio*, 6 AD3d 452, 453). Accordingly, the Supreme Court erred in granting the plaintiffs' motion for an award of sanctions against the appellants.

SKELOS, J.P., ANGIOLILLO, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court