

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

D28355
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_____AD3d_____

Argued - April 29, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-08723

DECISION & ORDER

Marek Rozen, et al., appellants, v Nite Riders Group, Inc., et al., defendants-respondents; Russ & Russ, P.C., et al., nonparty-respondents.

(Index No. 1148/05)

Thaler & Gertler, LLP, East Meadow, N.Y. (Richard G. Gertler of counsel), for appellants.

Nesenoff & Miltenberg, LLP, New York, N.Y. (Andrew T. Miltenberg, Eric Anthony Zeni, and Philip A. Byler of counsel), for nonparty-respondents.

In an action to recover on certain promissory notes, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Warshawsky, J.), entered August 5, 2008, as denied their motion for an award of costs and to impose a monetary sanction against the defendants' former attorneys pursuant to 22 NYCRR 130-1.1.

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

Contrary to the plaintiffs' contention, the Supreme Court providently exercised its discretion in denying their motion for an award of costs and to impose a monetary sanction upon the defendants' former attorneys (hereinafter the nonparty-respondents) (*see Davey v Davey*, 44 AD3d 701; *Nieves v City of New York*, 35 AD3d 557; *Riley v ISS Intl. Serv. Sys.*, 304 AD2d 637). The record supports the Supreme Court's conclusion that the nonparty-respondents did not engage in frivolous conduct within the meaning of 22 NYCRR 130-1.1(c)(2) (*see Glenn v Annunziata*, 53 AD3d 565, 566; *Beatie v DeLong*, 164 AD2d 104, 107-109; *Dillenberger v 74 Fifth Ave. Owners*

September 14, 2010

Page 1.

ROZEN v NITE RIDERS GROUP, INC.

Corp., 155 AD2d 327; *cf. Yan v Klein*, 35 AD3d 729, 729-730; *O'Neill v Ho*, 28 AD3d 626, 627; *Jacobs v Macy's E., Inc.*, 17 AD3d 318, 320; *Curcio v Hogan Coring & Sawing Corp.*, 303 AD2d 357, 358-359; *Barco Auto Leasing Corp. v Thornton*, 298 AD2d 341).

PRUDENTI, P.J., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court