

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

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Submitted - April 2, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2008-02658

DECISION & ORDER

Louise Ruffin, respondent, v Lion Corp., etc.,  
et al., appellants.

(Index No. 41218/03)

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Fisher & Fisher, New York, N.Y. (Andrew S. Fisher and Princess M. Tate of  
counsel), for appellants.

David S. Kritzer, Huntington, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Partnow, J.), dated January 25, 2008, which denied their motion pursuant to CPLR 5015(a)(4) to vacate a default judgment dated April 8, 2005, as amended by order dated October 13, 2006, and pursuant to CPLR 3211(a)(8) to dismiss the complaint. By decision and order dated June 9, 2009, this Court reversed the order of the Supreme Court and granted the defendants' motion to vacate the default judgment dated April 8, 2005, as amended by order dated October 13, 2006, and to dismiss the complaint. In an opinion dated November 30, 2010, the Court of Appeals reversed the decision and order of this Court and remitted the matter to this Court for consideration of issues that may have been raised but not considered on the appeal to this Court (*see Ruffin v Lion Corp.*, 15 NY3d 578).

ORDERED that, upon remittitur from the Court of Appeals, the order of the Supreme Court is affirmed, without costs or disbursements.

The defendants moved to dismiss this action and to vacate the default judgment, as amended, pursuant to CPLR 5015(a)(4) on the ground that the plaintiff never acquired jurisdiction over the defendant Lion Corp., doing business as Lion Tour Bus Company, also known as Lion Tour & Travel, Inc., also known as Lion Trailways (hereinafter Lion Corp.). The summons and complaint

was served on Lion Corp. at its headquarters in Levittown, Pennsylvania, by personal service on its vice-president. Since the process server was not a New York State resident or a person authorized to effect service in Pennsylvania, however, the defendants contended that the plaintiff failed to comply with CPLR 313.

In an order dated January 25, 2008, the Supreme Court denied the motion to vacate the default judgment, as amended, finding that the violation of CPLR 313 was a mere irregularity that could be disregarded. This Court, concluding that jurisdiction was never acquired over Lion Corp. because service of process had been improperly effected and, thus, the resulting default judgment, as amended, was a nullity, reversed the Supreme Court's order and granted the defendants' motion to vacate the default judgment and to dismiss the complaint (*see Ruffin v Lion Corp.*, 63 AD3d 814, 816). The Court of Appeals reversed and remitted the matter to this Court for consideration of "such other issues as defendant may have raised upon its appeal" (*Ruffin v Lion Corp.*, 15 NY3d 578, 583).

The only issue raised by the defendants, but not determined upon appeal to this Court, was whether the order dated October 13, 2006, improperly amended the default judgment to add additional names under which Lion Corp. does business, because there was no additional service of process made after the initial service of the summons and complaint upon Lion Corp. However, as this contention was never raised before the Supreme Court, it is improperly before this Court.

SKELOS, J.P., FLORIO, LEVENTHAL and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court