

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

D30509  
G/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 10, 2011

A. GAIL PRUDENTI, P.J.  
RANDALL T. ENG  
ARIEL E. BELEN  
SANDRA L. SGROI, JJ.

---

2010-01319

DECISION & ORDER

Alice Laraine Dimery, appellant,  
v Ulster Savings Bank, respondent.

(Index No. 230/93)

---

Alice Laraine Dimery, Mahopac Falls, N.Y., appellant pro se.

Alston & Bird LLP, New York, N.Y. (John P. Doherty of counsel), for respondent.

In an action, inter alia, for an accounting, which was consolidated with a summary holdover proceeding to recover possession of and to evict the plaintiff from certain real property, the plaintiff appeals from an order of the Supreme Court, Putnam County (O'Rourke, J.), dated February 18, 2009, which (a) denied her motion pursuant to CPLR 5015(a)(3), (4), and (5) to vacate a judgment of the same court (Hickman, J.), entered October 26, 2000, providing, among other things, for her eviction from her home on the subject real property, and (b) enjoined her from bringing any further motions regarding the subject matter of the action without the permission of the Supreme Court.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied that branch of the plaintiff's motion which was pursuant to CPLR 5015(a)(3) to vacate a judgment entered October 26, 2000. A party seeking relief from a judgment pursuant to CPLR 5015(a)(3) must make the motion within a reasonable time (*see Bank of N.Y. v Stradford*, 55 AD3d 765; *Rizzo v St. Lawrence Univ.*, 24 AD3d 983, 984; *Ames Capital Corp. v Davidsohn*, 24 AD3d 474). Here, the plaintiff's delay of more than eight years after the entry of the subject judgment was unreasonable (*Sieger v Sieger*, 51 AD3d 1004, 1006; *Ames Capital Corp. v Davidsohn*, 24 AD3d at 475).

March 22, 2011

Page 1.

DIMERY v ULSTER SAVINGS BANK

The Supreme Court also properly denied those branches of the plaintiff's motion which were pursuant to CPLR 5015(a)(4) and (5) to vacate the subject judgment. With the exception of the plaintiff's contentions regarding the removal and subsequent disposition of her personal property during the defendant's June 13, 2001, eviction of the plaintiff from her home on the subject premises, the plaintiff's contentions could have been raised on her prior appeal from the judgment (*see Dimery v Ulster Sav. Bank*, 13 AD3d 574, *cert denied* 547 US 1097). Accordingly, the plaintiff waived appellate review of those issues (*see New York Tel. Co. v Supervisor of Town of Oyster Bay*, 35 AD3d 417; *Young v Tseng*, 23 AD3d 552).

The plaintiff's remaining contentions, based on the removal and subsequent disposition of her personal property during the June 13, 2001, eviction, are time-barred (*see CPLR* 213[1], [2], 214[3], [4]).

Public policy generally mandates free access to the courts (*see Matter of Leopold*, 287 AD2d 718; *Sassower v Signorelli*, 99 AD2d 358, 359). Here, however, the record reflects that the plaintiff forfeited that right by abusing the judicial process through vexatious litigation. Accordingly, it was not improper for the Supreme Court to enjoin the plaintiff from bringing any further motions regarding the subject matter of the instant action without its permission (*see Matter of Ram v Hershowitz*, 76 AD3d 1022, 1023; *Vogelgesang v Vogelgesang*, 71 AD3d 1132, 1134; *Matter of Manwani v Manwani*, 286 AD2d 767, 768-769; *cf. Deshpande v Medisys Health Network, Inc.*, 70 AD3d 760, 763).

PRUDENTI, P.J., ENG, BELEN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court