

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

D32257
O/prt

_____AD3d_____

Argued - June 17, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-07106

DECISION & ORDER

Richard M. Egloff, appellant, v Town of Lewisboro,
et al., defendants/respondents, Wormser, Kiely, Galef
& Jacobs, LLP, defendant/respondent-respondent;
Danzig Fishman & Decea, nonparty-appellant.

(Index No. 13865/09)

Danzig Fishman & Decea, White Plains, N.Y. (Thomas B. Decea and Yenisey Rodriguez-McCloskey of counsel), nonparty-appellant pro se and for appellant.

Wormser, Kiely, Galef & Jacobs, LLP, White Plains, N.Y. (John T. Morin and Daniel Pozin of counsel), defendant/respondent-respondent pro se.

In a hybrid action, inter alia, to enjoin the defendants/respondents from evicting the plaintiff/petitioner from the subject property, and proceeding pursuant to CPLR article 78, in effect, to compel the Town of Lewisboro and Joann Vasi, Enforcing Officer of the Town of Lewisboro, to set aside the transfer of a deed to real property previously owned by the plaintiff/petitioner, the plaintiff/petitioner and nonparty Danzig Fishman & Decea, the attorney for the plaintiff/petitioner, appeal from a judgment of the Supreme Court, Westchester County (Loehr, J.), entered June 15, 2010, which, upon an order of the same court entered March 22, 2010, granting the motion of Wormser, Kiely, Galef & Jacobs, LLP, pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint/petition insofar as asserted against it, and for an award of costs and attorneys' fees, payable by Danzig Fishman & Decea pursuant to 22 NYCRR 130-1.1, and upon an order of the same court entered June 15, 2010, adhering, upon reargument, to the original determination and calculating the amount of costs and attorneys' fees owed, is in favor of Wormser, Kiely, Galef & Jacobs, LLP, and against the plaintiff/petitioner, dismissing the complaint/petition insofar as asserted

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against it and awarding costs and attorneys' fees in the sum of \$45,833.62, payable by Danzig Fishman & Decea.

ORDERED that on the Court's own motion, the notice of appeal by nonparty Danzig Fishman & Decea is deemed also to be a notice of appeal by the plaintiff/petitioner (*see* CPLR 2001; *Matter of Tagliaferri v Weiler*, 1 NY3d 605; *Joan 2000, Ltd. v Deco Constr. Corp.*, 66 AD3d 841); and it is further,

ORDERED that the judgment is modified, on the law, on the facts, and in the exercise of discretion, by deleting the provision thereof awarding Wormser, Kiely, Galef & Jacobs, LLP, costs and attorneys' fees in the sum of \$45,883.62, payable by Danzig, Fishman & Decea, and substituting therefor a provision imposing a sanction upon Danzig, Fishman & Decea in the sum of \$7,500, payable pursuant to 22 NYCRR 130-1.3; as so modified, the judgment is affirmed, without costs or disbursements, and the orders dated March 22, 2010, and June 15, 2010, respectively, are modified accordingly.

The Supreme Court properly dismissed the amended complaint/petition insofar as asserted against the defendant Wormser, Kiely, Galef & Jacobs, LLP (*see* CPLR 3211[a][1], [a][7]). While we agree with the Supreme Court that Danzig, Fishman & Decea, as counsel for the plaintiff/petitioner, engaged in frivolous conduct, we find that, under the circumstances, a sanction in the sum of \$7,500 is the more appropriate sanction, and we modify the judgment accordingly (*see* 22 NYCRR 130-1.1).

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

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DECISION & ORDER ON MOTION

Richard M. Egloff, appellant, v Town of Lewisboro, et al., defendants/respondents, Wormser, Kiely, Galef & Jacobs, LLP, defendant/respondent-respondent; Danzig Fishman & Decea, nonparty-appellant.

(Index No. 13865/09)

Motion by the defendant/respondent-respondent to strike the nonparty-appellant's reply brief on an appeal from a judgment of the Supreme Court, Westchester County, entered June 15, 2010, on the grounds that, inter alia, it refers to matter dehors the record, and for an award of costs in the form of reimbursement for reasonable attorney's fees, resulting from that appellant's frivolous conduct pursuant to 22 NYCRR 130-1.1. By decision and order on motion of this Court dated June 20, 2011, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

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Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied.

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court