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

D32593
Y/prt

_____AD3d_____ Argued - September 26, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-09336 DECISION & ORDER

Uri Tornheim, appellant, v Blue & White Food Products Corp., respondent.

(Index No. 1962/04)

Bijal M. Jani, Pearl River, N.Y., for appellant.

Blank Rome, LLP, New York, N.Y. (Harris N. Cogan and Ryan E. Cronin of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the plaintiff is the beneficial owner of 20% of the shares of the stock in the defendant, Blue & White Food Products Corp., and to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Rockland County (Nelson, J.), dated August 11, 2010, which denied his motion pursuant to CPLR 5015(a)(2) and (3) to vacate a judgment of the same court dated July 15, 2010, which was in favor of the defendant and against him, dismissing the complaint.

ORDERED that the order is affirmed, with costs; and it is further,

ORDERED that on the Court's own motion, counsel for the respective parties are directed to show cause why an order should or should not be made and entered imposing such sanctions and costs, if any, against the plaintiff and/or his counsel pursuant to 22 NYCRR 130-1.1(c) as this Court may deem appropriate, by filing an affirmation or affidavit on that issue in the office of the Clerk of this Court and serving one copy of the same on each other on or before November 21, 2011; and it is further,

ORDERED that the Clerk of the Court, or his designee, is directed to serve counsel for the respective parties with a copy of this decision and order by regular mail.

Upon his motion to vacate the judgment, the plaintiff failed to present either newly-discovered evidence which, if introduced at trial, would have produced a different result (*see* CPLR 5015[a][2]), or any evidence of fraud, misrepresentation, or other misconduct on the part of the defendant (*see* CPLR 5015[a][3]). Therefore, the motion was properly denied (*see Walker v Weinstock*, 255 AD2d 508).

Moreover, the conduct of the plaintiff and his attorney in pursuing the instant appeal appears to be (a) completely without merit in law or fact and unsupported by a reasonable argument for an extension, modification, or reversal of existing law, or (b) undertaken primarily to delay or prolong the resolution of litigation or to harass or maliciously injure another (*see* Rules of Chief Administrator of Courts [22 NYCRR] § 130-1.1[c]; *Tornheim v Blue & White Food Prods. Corp.*, 73 AD3d 749; *Weinstock v Weinstock*, 253 AD2d 873, 874, *cert denied* 526 US 1088; *Palmieri v Thomas*, 29 AD3d 658, 659). Accordingly, we direct counsel for the parties to submit an affirmation or affidavit on the issue of the imposition of sanctions and/or costs, if any, against the plaintiff and/or his counsel pursuant to 22 NYCRR 130-1.1(c).

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

ENTER:

Matthew G. Kiernan
Clerk of the Court