

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

D32773
G/kmb

_____AD3d_____

Submitted - October 18, 2011

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2011-00930

DECISION & ORDER

Caf Dowlah, appellant, v Bilkis S. Dowlah, defendant;
Visnick McGovern Milizio, LLP, nonparty-respondent.

(Index No. 2128/06)

Caf Dowlah, Forest Hills, N.Y., appellant pro se.

Visnick McGovern Milizio, LLP, Lake Success, N.Y. (Avrohom Gefen of counsel),
for nonparty-respondent pro se.

In a matrimonial action in which the parties were divorced by judgment entered September 23, 2009, the plaintiff appeals from an order of the Supreme Court, Queens County (Jackman-Brown, J.), dated December 10, 2010, which denied his motion, in effect, to vacate a money judgment of the same court entered May 24, 2010, which, upon the judgment of divorce, is in favor of the nonparty Visnick McGovern Milizio, LLP, and against him in the principal sum of \$15,000, representing an award of an attorney's fee, and to vacate the income execution enforcing the money judgment.

ORDERED that the order is affirmed, with costs.

Pursuant to CPLR 5015(a), a court may vacate an order or judgment on several different grounds, including the fraud, misrepresentation, or other misconduct of an adverse party. Here, the plaintiff failed to establish that the money judgment issued in favor of his former wife's attorneys was procured through fraud or other misconduct (*see Gaw v Gaw*, 80 AD3d 557, 558; *Katz v Marra*, 74 AD3d 888, 890-891; *Gamba v Gamba*, 253 AD2d 784, 785), or that any of the other statutory grounds for vacatur set forth in CPLR 5015(a) apply (*see Alderman v Alderman*, 78

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AD3d 621). The plaintiff also failed to show that there was a basis to invoke the court's inherent power to vacate the money judgment in the interest of substantial justice (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; *Galasso, Langione & Botter, LLP v Liotti*, 81 AD3d 884, 885; *Alderman v Alderman*, 78 AD3d at 622; *Katz v Marra*, 74 AD3d at 891). Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was, in effect, to vacate the money judgment.

Further, under the circumstances of this case, the Supreme Court properly exercised its discretion in denying that branch of the plaintiff's motion which was, in effect, to vacate the income execution enforcing the money judgment. The plaintiff failed to demonstrate that protective relief was warranted pursuant to CPLR 5240 or CPLR 5231(i) (*see generally Guardian Loan Co. v Early*, 47 NY2d 515; *see also Nord v Berman*, 5 Misc 3d 1002[A], 2004 NY Slip Op 51150[U]; *cf. Midlantic Natl. Bank/North v Reif*, 732 F Supp 354).

RIVERA, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court