

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

D33332

H/prt

_____AD3d_____

Argued - April 28, 2011

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
ANITA R. FLORIO
LEONARD B. AUSTIN, JJ.

2010-00569

DECISION & ORDER

David Gurwitz, et al., appellants, v
Richard H. French, Jr., et al., respondents.

(Index No. 9659/08)

Michael Schneider, New York, N.Y., for appellants.

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, Merril S. Biscone, and Max Gershenoff of counsel), for respondents.

In an action, inter alia, for a judgment declaring that the plaintiffs have no liability to the defendants based on a release, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Rockland County (Garvey, J.), dated December 1, 2009, as, upon reargument and renewal, in effect, vacated so much of the original determination as denied those branches of the defendants' motion which were pursuant to CPLR 3211(a)(5) to dismiss the first, second, fourth, and fifth causes of action as barred by a release, and thereupon granted those branches of the motion.

ORDERED that the appeal is dismissed, with costs.

"It is the obligation of the appellant to assemble a proper record on appeal, which must contain all of the relevant papers that were before the Supreme Court" (*Block 6222 Const. Corp. v Sobhani*, 84 AD3d 1292, quoting *Wen Zong Yu v Hua Fan*, 65 AD3d 1335; see CPLR 5526; *Matter of Remy v Mitchell*, 60 AD3d 860). Here, although the appellants included in the record on appeal a copy of the papers in support of and in opposition to the defendants' motion to dismiss the

December 20, 2011

Page 1.

GURWITZ v FRENCH

complaint, the appellants failed to include a copy of the motion papers pertaining to the defendants' subsequent motion, the determination of which was the subject of the order appealed from. Thus, the record is inadequate to enable this Court to render an informed decision on the merits, and the appeal must be dismissed (*see Block 6222 Const. Corp. v Sobhani*, 84 AD3d 1292; *Emco Tech Constr. Corp. v Pilavas*, 68 AD3d 918, 918-919).

RIVERA, J.P., SKELOS, FLORIO and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court