

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

D32647
C/kmb/prt

_____AD3d_____

Submitted - September 30, 2011

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-05777

DECISION & ORDER

S.P.Q.R. Co., Inc., et al., appellants, v
United Rockland Holding Company, Inc.,
et al., respondents, et al., defendants.

(Index No. 5034/06)

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, White Plains, N.Y. (Evan Wiederkehr of counsel), for appellants.

Kantrowitz, Goldhamer & Graifman, P.C., Chestnut Ridge, N.Y. (Reginald H. Rutishauser and Barry S. Kantrowitz of counsel), for respondents.

In an action, inter alia, to permanently enjoin the defendant United Rockland Stairs, Inc., from trespassing on a certain disputed parcel of real property, and to compel that defendant to remove a certain fence from that property, the plaintiffs appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Rockland County (Sherwood, J.H.O.), dated January 6, 2010, as, upon a decision of the same court dated December 9, 2009, made after a nonjury trial, is in favor of the defendants and against them, dismissing the complaint and awarding disbursements to the defendants pursuant to CPLR 8301 in the sum of \$2,052.28.

ORDERED that the appeal from so much of the judgment as awarded disbursements to the defendants pursuant to CPLR 8301 in the sum of \$2,052.28 is dismissed; and it is further,

ORDERED that the judgment is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

January 31, 2012

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S.P.Q.R. CO., INC. v UNITED ROCKLAND HOLDING COMPANY, INC.

On an appeal from a judgment after a nonjury trial, this Court's power to review the evidence is as broad as that of the trial court, and this Court may render the judgment it finds warranted by the facts, giving due regard to the trial court, which had the advantage of assessing the credibility of the witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Parry v Murphy*, 79 AD3d 713; *Sabetfard v Djavaheer Realty Corp.*, 40 AD3d 838). Here, the Supreme Court's determination to credit the testimony of the defendants' expert surveyor and to dismiss the complaint is supported by the record. Accordingly, there is no basis to disturb the Supreme Court's determination in favor of the defendants.

The appeal from so much of the judgment as awarded disbursements to the defendants pursuant to CPLR 8301 in the sum of \$2,052.28 must be dismissed, since the plaintiff failed to move for retaxation of costs before the Supreme Court pursuant to CPLR 8404 (*see Geller v Farber*, 250 AD2d 808; *Matter of Verga v Scaduto*, 99 AD2d 534; *Smith v Incorporated Vil. of Patchogue*, 285 App Div 1190).

MASTRO, A.P.J., ANGIOLILLO, BELEN and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court