

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

D34217
H/nl

_____AD3d_____

Argued - January 27, 2012

RUTH C. BALKIN, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2010-11763
2011-05623
2011-07005

DECISION & ORDER

Marianne K. Costello, et al., respondents, v Costello
Shea & Gaffney, LLP, et al., appellants.

(Index No. 20129/09)

Costello Shea & Gaffney, LLP, New York, N.Y. (William A. Goldstein pro se of counsel), appellant pro se and for appellants Frederick N. Gaffney, Steven E. Garry, Paul E. Blutman, Alan T. Blutman, Margaret Sullivan O'Connell, David N. Zane, Michael J. Morris, and Patrick G. Reidy.

Silverman Sclar Shin & Byrne PLLC, New York, N.Y. (Vincent Chirico and Thomas H. Herndon, Jr., of counsel), for respondents.

In an action, inter alia, for an accounting, the defendants appeal (1) from an order of the Supreme Court, Nassau County (Warshawsky, J.), entered October 26, 2010, which denied their motion for summary judgment dismissing the complaint and granted the plaintiffs' cross motion for summary judgment on the first cause of action, (2), as limited by their brief, from so much of an order of the same court entered April 27, 2011, as denied that branch of their motion which was for leave to reargue their motion for summary judgment dismissing the complaint and their opposition to the plaintiffs' cross motion for summary judgment on the first cause of action, and (3) from a judgment of the same court entered August 1, 2011, which, upon the orders, is in favor of the plaintiffs and against them in the principal sum of \$104,221.

ORDERED that the appeals from the orders are dismissed; and it is further,

March 13, 2012

Page 1.

COSTELLO v COSTELLO SHEA & GAFFNEY, LLP

ORDERED that the judgment is affirmed; and it is further,

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

The appeal from the intermediate order entered October 26, 2010, must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order entered October 26, 2010, are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]). The appeal from the order entered April 27, 2011, must be dismissed, as no appeal lies from an order denying reargument.

The Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint, and properly granted the plaintiffs' cross motion for summary judgment on the first cause of action (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557).

BALKIN, J.P., DICKERSON, BELEN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court