

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., Mendez, Shulman, Rodriguez, Hagler, JJ.

6591

KRISTOPHER FUHR et al.,
Plaintiffs-Appellants,

Index No. 153767/25
Case No. 2025-05994

-against-

LISA SMITH et al.,
Defendants-Respondents.

Patrick|Doerr LLP, New York (Mark Doerr of counsel), for appellants.

Harold M. Somer, PC, Westbury (Harold M. Somer of counsel), for respondents.

Order, Supreme Court, New York County (Gerald Lebovits, J.), entered July 25, 2025, which, to the extent appealed from as limited by the briefs, granted defendants' motion for an order of seizure, unanimously reversed, on the law, without costs, the order of seizure vacated, and defendants' counterclaim dismissed.

Defendants' answer, filed before plaintiffs filed their complaint, was a nullity, as was any counterclaim contained in the answer (*Anostario v Anostario*, 255 AD2d 777, 778 n 2 [3d Dept 1998]; see *Stevenson v Diamond Fuel Co., Inc.* 198 App Div 345, 347 [1st Dept 1921]). Thus, the counterclaim must be dismissed as procedurally improper (see *Rubin v Napoli Bern Ripka Shkolnik, LLP*, 151 AD3d 603, 604 [1st Dept 2017]). In addition, because there was no valid counterclaim, Supreme Court had no basis on

which to grant defendants' motion for an order of seizure (*see Paper Chemistry Consulting Lab. v Goetz*, 75 AD2d 579, 579 [2d Dept 1980]).

In light view of the foregoing, plaintiff's remaining arguments are academic.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. °

ENTERED: May 12, 2026

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first name "Susanna" and the last name "Rojas" clearly distinguishable.

Susanna Molina Rojas
Clerk of the Court