

Meagher, 100 NY2d 333 [2003]). Respondent made a motion upon notice, but did not move to dismiss the petition – it sought different relief. Hence, the portion of the order that dismissed the petition was sua sponte, and not appealable as of right (*see e.g. Mazzocchi v Gilbert*, 185 AD3d 438 [1st Dept 2020], *lv denied* 37 NY3d 908 [2021]; *Hladun-Goldmann v Rentsch Assoc.*, 8 AD3d 73 [1st Dept 2004]). The proper procedure should have been for petitioner to move to vacate the dismissal order and appeal as of right if that motion was denied (CPLR 5701 [a][3]). We decline to grant leave to appeal (CPLR 5701[c]) since petitioner did not move to vacate the February 2012 judgment by confession within a reasonable time (*see Mark v Lenfest*, 80 AD3d 426 [1st Dept 2011]; *see also Mazzocchi*, 185 AD3d at 438 [dismissing appeal where claims appeared to be time-barred]).

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

ENTERED: February 22, 2022



Susanna Molina Rojas
Clerk of the Court