

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

D55395
L/hu

_____AD3d_____

Argued - December 14, 2017

REINALDO E. RIVERA, J.P.
SHERI S. ROMAN
COLLEEN D. DUFFY
FRANCESCA E. CONNOLLY, JJ.

2015-10317
2015-10319

DECISION & ORDER

Sikanderpal Singh, et al., appellants, v Ram Reddy,
etc., et al., respondents.

(Index No. 707081/14)

Naresh Gehi, Forest Hills, NY (Suryia Rahman of counsel), for appellants.

Cooper & Paroff, P.C., Kew Gardens, NY (Henry M. Graham of counsel), for
respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal from (1) an order of the Supreme Court, Queens County (Allan B. Weiss, J.), entered April 13, 2015, and (2) an order of the same court entered October 2, 2015. The order entered April 13, 2015, granted the defendants' unopposed motion pursuant to CPLR 3211(a) to dismiss the complaint. The order entered October 2, 2015, insofar as appealed from, denied the plaintiffs' motion for leave to reargue or renew with respect to the order entered April 13, 2015.

ORDERED that the appeal from the order entered April 13, 2015, is dismissed, as no appeal lies from an order entered upon the default of an appealing party (*see* CPLR 5511); and it is further,

ORDERED that the appeal from so much of the order entered October 2, 2015, as denied that branch of the plaintiffs' motion which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

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ORDERED that the order entered October 2, 2015, is affirmed insofar as reviewed; and it is further,

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

In October 2014, the plaintiffs commenced this action, inter alia, to recover damages for breach of contract. The defendants moved pursuant to CPLR 3211(a) to dismiss the complaint, and the plaintiffs failed to oppose the motion. In an order entered April 13, 2015, the Supreme Court granted the defendants' unopposed motion. Thereafter, the plaintiffs moved for leave to reargue or renew with respect to the order entered April 13, 2015. In an order entered October 2, 2015, the court, among other things, denied the plaintiffs' motion for leave to reargue or renew. The plaintiffs appeal.

The branch of the plaintiffs' motion which was for leave to renew was properly denied, since there was no opposition to the defendants' motion to dismiss that could have been renewed (*see* CPLR 2221; *Hudson City Sav. Bank v Bomba*, 149 AD3d 704, 705). To the extent that the Supreme Court treated that branch of the plaintiffs' motion as, in effect, a motion to vacate the default, that branch of the plaintiffs' motion was also properly denied. The plaintiffs failed to establish a reasonable excuse for their default (*see* CPLR 5015[a][1]; *Taylor Appraisals v Prokop*, 99 AD3d 985, 985).

The plaintiffs' remaining contentions are either not properly before this Court or without merit.

RIVERA, J.P., ROMAN, DUFFY and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court