

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

705

CA 23-01662

PRESENT: WHALEN, P.J., SMITH, LINDLEY, AND DELCONTE, JJ.

GREGORY M. KWIATKOWSKI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CARIOL J. HORNE, DEFENDANT-APPELLANT.

KIRKLAND & ELLIS LLP, NEW YORK CITY (KEVIN DECKER OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAW OFFICE OF RALPH C. LORIGO, WEST SENECA (FRANK J. JACOBSON OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Raymond W. Walter, J.), entered September 14, 2023. The order denied the motion of defendant to vacate, inter alia, a 2011 judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Defendant appeals from an order that denied her motion to vacate, inter alia, a 2011 judgment entered against her in this action. We note that, before defendant filed her motion, plaintiff commenced a separate action on the 2011 judgment pursuant to CPLR 5014 and obtained a renewal judgment. CPLR 5014 provides for an action on a money judgment that " 'enables the judgment creditor to sue on the old judgment and thereby acquire a *new judgment* and a fresh 10 year lien' " (*Gletzer v Harris*, 12 NY3d 468, 475 [2009] [emphasis added]; see CPLR 5203 [a]). Assuming, arguendo, that the entry of the renewal judgment did not extinguish the original judgment (see generally *Platinum Funding Corp. v Blue Ocean Lines*, 249 AD2d 19, 19 [1st Dept 1998]), we conclude that Supreme Court did not abuse its discretion in denying the motion after considering each of the factors raised by defendant (see generally *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]; *Ladd v Stevenson*, 112 NY 325, 332 [1889]; *Quinn v Guerra*, 26 AD3d 872, 873 [4th Dept 2006], appeal dismissed 7 NY3d 741 [2006]).

Entered: January 31, 2025

Ann Dillon Flynn
Clerk of the Court