

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

859

CA 24-00703

PRESENT: SMITH, J.P., CURRAN, MONTOUR, GREENWOOD, AND KEANE, JJ.

ALBERT G. FRACCOLA, JR., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

1ST CHOICE REALTY, INC., ET AL., DEFENDANTS,
AND HONORABLE RANDAL B. CALDWELL,
DEFENDANT-RESPONDENT.

ALBERT G. FRACCOLA, JR., PLAINTIFF-APPELLANT PRO SE.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (ALEXANDRIA TWINEM OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Mark R. Rose, J.), entered October 26, 2023. The order, among other things, granted the motion of defendant Honorable Randal B. Caldwell to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed with costs.

Memorandum: Plaintiff, pro se, appeals from an order that, inter alia, granted the motion of the Honorable Randal B. Caldwell (defendant) to dismiss plaintiff's complaint against him and dismissed the complaint in its entirety. We affirm.

Contrary to plaintiff's contention, Supreme Court properly granted defendant's motion and dismissed the complaint. This action is based on subject matter concerning a 2005 stipulation by which plaintiff agreed to settle various lawsuits. As we have previously noted, "courts have issued at least three prior orders prohibiting [plaintiff] from commencing actions based on the subject matter of the 2005 stipulation without prior leave of court" and, here, plaintiff's complaint was filed without leave of court (*Fraccola v 1st Choice Realty, Inc.*, 206 AD3d 1649, 1650 [4th Dept 2022], *appeal dismissed* 38 NY3d 1155 [2022]; see also *Fraccola v 1st Choice Realty, Inc.*, 224 AD3d 1227, 1228 [4th Dept 2024]). In light of our determination, we need not address plaintiff's remaining contentions.

Entered: January 31, 2025

Ann Dillon Flynn
Clerk of the Court