

Jackson v Westminster House Owners, Inc.
2007 NY Slip Op 31246(U)
May 8, 2007
Supreme Court, NewYork County
Docket Number: 0115879/2001
Judge: Kibbie F. Payne
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

RICHARD JACKSON and SANDRA JACKSON,

Plaintiffs,

- against -

INDEX NO. 115879/01

MOTION DATE 3/30/07

MOTION SEQ. NO. 010

WESTMINSTER HOUSE OWNERS INC., and
MAXWELL-KATES, INC.,

MOTION CAL. NO. _____

Defendants.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, plaintiffs' motion pursuant to CPLR 2221 and CPLR 5015 is denied, and defendant Westminster House Owners, Inc.'s cross-motion is denied in accordance with the attached memorandum.

FILED
MAY 17 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: May 8, 2007

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4

RICHARD JACKSON and SANDRA JACKSON,

Index No. 115879/01

Plaintiffs,

Motion Seq. 010

-against-

Decision & Order

WESTMINSTER HOUSE OWNERS, INC., and
MAXWELL-KATES, INC.,

Defendants.

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

KIBBIE F. PAYNE, J.:

Plaintiffs move pursuant to CPLR 2221 to ~~renew~~ "renew"
"consideration of a portion of the Decision/Judgment" of this
court, entered May 18, 2005, which granted defendant Westminster
House Owners, Inc. (Westminster) attorneys' fees and referred the
issue of such fees to a Special Referee and, upon renewal, to
vacate said portion of the order and the related orders of the
special referee. Plaintiffs contend that Dupuis v East 77th
Owners Corp. (32 AD3d 720, 721 [1st Dept. 2006]) represents a
change in law, requiring a reversal of the court's determination
regarding attorneys' fees. Plaintiffs further move pursuant to
CPLR 5015 to vacate the May 18, 2005 judgment, and the related
determinations of the special referee. Westminster opposes this
motion and cross-moves for sanctions and attorneys' fees.

CPLR 2221 permits parties to apply for leave "to renew . . .
a prior motion, for leave to appeal from, or to stay, vacate or
modify, an order" "Renewal is not a proper vehicle for

obtaining relief from a judgment" (see Matter of Curry v Vertex Restoration Corp., 252 AD2d 360 [1st Dept. 1998]; see also Neville v Marie Therese Martin, 38 AD3d 386 [1st Dept. 2007]). In any event, plaintiffs' reliance on Dupuis (32 AD3d 720) for renewal is misplaced. Dupuis does not present a change in law (see CPLR 2221 [e]). That case interprets a reimbursement provision in a lease agreement using general principles and considering the arguments set forth by the parties. The decision does not purport to establish new principles of interpretation or otherwise. Indeed, in support of its analysis, the Dupuis court cites decisions pre-dating this action by five and 13 years (see Dupuis, 32 AD2d at 721, citing St. George Tower & Grill Owners Corp. v Honig, 232 AD2d 475 [2nd Dept. 1996] and Mongulescu v 255 W. 98th Str. Owners Corp., 135 AD2d 32, 40-41 [1st Dept. 1988]).

Despite the existence of this case law, plaintiffs failed to oppose Westminster's counterclaim for legal fees on the specific ground that the circumstances presented did not meet the lease criteria for such reimbursement. This court granted Westminster's counterclaim without such opposition, and the First Department affirmed this court's judgment (see Jackson v Westminster House, Owners, Inc., 24 AD3d 249 [1st Dept. 2005], lv denied 7 NY3d 704 [2006]).

Plaintiffs' motion to vacate pursuant to CPLR 5015 is similarly unavailing. Plaintiffs fail to establish any ground

for such relief. The court, however, will not grant Westminster's cross-motion to sanction plaintiffs and award it attorneys' fees. Plaintiffs arguments here were not so utterly lacking in merit to qualify as frivolous conduct (see Rules of the Chief Administrator [22 NYCRR] § 130-1.1 [c]). The court reviewed the parties' remaining contentions and find them without merit. Accordingly, it is

ORDERED that the motion and cross-motion are denied.

The foregoing constitutes the decision and order of the court.

DATED: *May 8, 2007*



Hon. Kibbie F. Payne, J.S.C.

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