

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Lauren A. Katz v. Joseph A. DePaola III

Katz, 2025 NY Slip Op 06608 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2023-03555; 2023-03557 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department, dismissed the appeal from an order determining entitlement to costs because no appeal lay as of right and any direct appeal terminated upon entry of judgment. It affirmed the judgment awarding the defendant \$2,036.83 in costs and disbursements, holding that no automatic stay applied because the plaintiff had filed a motion rather than a notice of appeal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Linda Christopher, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	November 26, 2025
DOCKET	2023-03555; 2023-03557
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order and judgment of the Supreme Court, Rockland County, concerning an award of \$2,036.83 in costs and disbursements to the defendant.
PRECEDENTIAL VALUE	Published
PARTIES	Lauren A. Katz v. Joseph A. DePaola III

TOPICS

- costs
- appellate procedure
- final judgment rule
- civil procedure
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appeal from the April 4, 2023 order awarding costs and disbursements had to be dismissed because no appeal lies as of right from an order that did not decide a motion made on notice and any direct appeal terminated upon entry of judgment.
2. Whether the judgment awarding the defendant \$2,036.83 in costs and disbursements was prematurely entered while the plaintiff's motion for leave to reargue or seek leave to appeal was pending.
3. Whether the plaintiff's remaining contention could be considered when it relied on matter dehors the record.

HOLDINGS

1. The appeal from the order must be dismissed because no appeal lies as of right from an order that does not decide a motion made on notice, and any possibility of a direct appeal from the order ended when judgment was entered.
2. The judgment awarding the defendant costs and disbursements was properly issued because the plaintiff's motion for leave to reargue was not an appeal and did not trigger the automatic stay under CPLR 5519(a).
3. The plaintiff's remaining contention was not properly before the Appellate Division because it was based on matter dehors the record.

KEY QUOTATIONS

*“It is elementary that a final judgment or order represents a valid and conclusive adjudication of the parties' substantive rights, unless and until it is overturned on appeal.” (at *1)*

*“Furthermore, while an appeal from a final judgment or order may leave an inchoate shadow on the rights defined therein, those rights are nonetheless fully enforceable in the absence of a judicially issued stay pending disposition of the appeal” (at *1)*

FACTUAL BACKGROUND

The underlying action sought declaratory and injunctive relief concerning enforcement of a restrictive covenant. The Appellate Division had previously affirmed dismissal of the complaint for lack of standing and awarded costs on appeal to the defendant. The defendant subsequently sought entry of a judgment awarding \$2,036.83 in costs and disbursements while the plaintiff's motion for leave to reargue or seek Court of Appeals review was pending.

PROCEDURAL HISTORY

The Supreme Court previously dismissed the complaint for lack of standing and awarded the defendant costs on appeal. After the defendant filed a proposed judgment and bill of costs, the plaintiff argued that entry of judgment was premature because her motion for leave to reargue or, alternatively, for leave to appeal to the

Court of Appeals remained pending. The Supreme Court awarded the full amount of costs and disbursements. The Appellate Division dismissed the appeal from the order and affirmed the judgment insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Katz v. DePaola, 211 AD3d 1020
- Da Silva v. Musso, 76 NY2d 436, 440
- Matter of Samson R. [Christopher R.], 227 AD3d 911, 913

OPINION

PER CURIAM.

Katz v DePaola (2025 NY Slip Op 06608) Katz v DePaola 2025 NY Slip Op 06608 Decided on November 26, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on November 26, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

LINDA CHRISTOPHER LOURDES M. VENTURA JAMES P. MCCORMACK, JJ. 2023-03555 2023-03557 (Index No. 37264/19) [*1]Lauren A. Katz, appellant, v Joseph A. DePaola III, respondent. Douglas Chertok, New York, NY, for appellant. Roger, Habas & Eisen, P.C. (Catina Law, PLLC, New City, NY [Laura M. Catina], of counsel), for respondent. DECISION & ORDER In an action, inter alia, for declaratory and injunctive relief, the plaintiff appeals from (1) an order of the Supreme Court, Rockland County (Thomas P. Zugibe, J.), dated April 4, 2023, and (2) a judgment of the same court dated April 4, 2023.

The order determined that the defendant was entitled to costs and disbursements in the sum of \$2,036.83. The judgment, insofar as appealed from, awarded the defendant costs and disbursements in the sum of \$2,036.83. ORDERED that the appeal from the order is dismissed, as no appeal lies as of right from an order that does not decide a motion made on notice (see CPLR 5701[a][2]), and any possibility of taking a direct appeal from the order terminated with the entry of the judgment in the action (see Matter of Aho, 39 NY2d 241, 248); and it is further, ORDERED that the judgment is affirmed insofar as appealed from; and it is further, ORDERED that one bill of costs is awarded to the defendant.

In this action, inter alia, for declaratory and injunctive relief with respect to the enforcement of a restrictive covenant, by decision and order dated December 28, 2022, this Court affirmed an order dated February 7, 2020, which, among other things, granted the defendant's cross-motion pursuant to CPLR 3211(a) to dismiss the complaint for lack of standing, and awarded costs on appeal to the defendant (see *Katz v DePaola*, 211 AD3d 1020).

On February 17, 2023, the defendant served and filed an affirmation in support of a proposed judgment, with a bill of costs in the sum of \$2,036.83. On March 23, 2023, the plaintiff submitted a letter to the Supreme Court, contending that the defendant's filings were premature and should be "dismissed" because her motion for leave to reargue the appeal from the order dated February 7, 2020, or, in the alternative, for leave to appeal to the Court of Appeals from this Court's decision and order was still pending.

In an order dated April 4, 2023, the Supreme Court determined that the defendant was entitled to the entire amount of the proposed costs and disbursements. The court issued a judgment [*2]dated April 4, 2023, inter alia, awarding the defendant costs and disbursements in the sum of \$2,036.83.

The plaintiff appeals. "It is elementary that a final judgment or order represents a valid and conclusive adjudication of the parties' substantive rights, unless and until it is overturned on appeal. Furthermore, while an appeal from a final judgment or order may leave an inchoate shadow on the rights defined therein, those rights are nonetheless fully enforceable in the absence of a judicially issued stay pending disposition of the appeal" (*Da Silva v Musso*, 76 NY2d 436, 440).

CPLR 5519(a) provides that under certain circumstances, "[s]ervice upon the adverse party of a notice of appeal... stays all proceedings to enforce the judgment or order appealed from pending the appeal." Here, the plaintiff's contention that the judgment was issued in error, as premature, based on the pendency of her motion, among other things, for leave to reargue the appeal from the order dated February 7, 2020, is without merit.

The automatic stay provided in CPLR 5519 was inapplicable because the plaintiff did not file a notice of appeal, but rather filed a motion, inter alia, for leave to reargue the appeal that already had been determined.

Thus, there was no appeal pending (see *id.* § 5519[a]). The plaintiff failed to demonstrate that there was any stay in effect at the time the defendant sought a judgment, among other things, awarding him costs and disbursements.

Accordingly, so much of the judgment as awarded the defendant costs and disbursements was properly issued. The plaintiff's remaining contention is not properly before this Court, as it is based on matter dehors the record (see *Matter of Samson R. [Christopher R.]*, 227 AD3d 911,

913). DILLON, J.P., CHRISTOPHER, VENTURA and MCCORMACK, JJ., concur. ENTER:
Darrell M. Joseph Clerk of the Court

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