

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Benishai v. Benishai

83 A.D.3d 420 (N.Y. App. Div. 1st Dep't 2011) · Decided April 5, 2011

SUMMARY

The Appellate Division, First Department, affirmed the denial of sanctions against attorneys who obtained an ex parte temporary restraining order. The court found that the application was not frivolous or primarily intended to harass or delay, that advance notice had been provided, and that the respondent was not harmed because a stipulation provided equivalent relief.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Mazzarelli, J.P.; Sweeny, J.; Renwick, J.; Richter, J.; Manzanet-Daniels, J.
JURISDICTION	New York
DECIDED	April 5, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from an order and judgment denying a motion for sanctions against petitioners' attorneys and a nonparty attorney and law firm.
STANDARD OF REVIEW	Abuse of discretion; the denial of sanctions was reviewed as a provident exercise of the lower court's discretion.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Petitioners v. Respondent

TOPICS

- sanctions
- injunctions
- arbitration
- family law
- civil procedure

PRACTICE AREAS

- civil procedure
- family law
- sanctions
- arbitration

QUESTIONS PRESENTED

1. Whether the lower court properly denied respondent's motion for sanctions based on petitioners' attorney's procurement of an ex parte temporary restraining order.

HOLDINGS

1. The denial of sanctions was a provident exercise of the lower court's discretion because respondent failed to show that the attorney's conduct was completely without merit, primarily intended to harass or maliciously injure, based on a falsely asserted material fact, or primarily undertaken to delay or prolong the litigation.

KEY QUOTATIONS

“The denial of sanctions as against Garson was a provident exercise of the court’s discretion.” (420)

“were completely without merit, were made primarily to harass or maliciously injure, or falsely asserted a material fact” (420)

“undertaken primarily to delay or prolong the resolution of the litigation” (420)

“The stipulation that he entered into in which the parties agreed, inter alia, “not to pursue any outstanding demands for arbitration” pending the court’s final ruling on the April 2010 petition provided the same relief that petitioners obtained through the TRO.” (421)

FACTUAL BACKGROUND

Petitioners' attorney obtained an ex parte temporary restraining order in connection with an April 2010 petition. Respondent argued that the attorney's conduct warranted sanctions, but the record showed that respondent's attorney had been notified in advance of the TRO application as required by the Uniform Rules for Trial Courts. The parties also stipulated not to pursue outstanding arbitration demands pending the court's final ruling, providing respondent the same relief obtained through the TRO, and there was no evidence that respondent was harmed by issuance of the TRO.

PROCEDURAL HISTORY

Supreme Court, New York County, denied respondent's motion for sanctions against petitioners' attorneys and Garson, Segal, Steinmetz, Fladgate LLP. The Appellate Division unanimously affirmed the denial insofar as appealed from, with costs.

DISPOSITION

affirmed

CASES CITED

- Parkchester S. Condominium Inc. v. Hernandez, 71 A.D.3d 503, 504 (N.Y. App. Div. 1st Dep't 2010)
- Sakow v. Columbia Bagel, Inc., 32 A.D.3d 689 (N.Y. App. Div. 2d Dep't 2006)

OPINION

PER CURIAM.

Order and judgment (one paper), Supreme Court, New York County (Eileen A. Rakower, J.), entered September 29, 2010, which, insofar as appealed from, denied respondent's motion for sanctions against petitioners' attorneys nonparty Robert Garson, Esq., and the law firm of Garson, Segal, Steinmetz, Fladgate LLP (collectively, Garson), unanimously affirmed, with costs.

The denial of sanctions as against Garson was a provident exercise of the court's discretion. Respondent failed to show that Garson's actions in obtaining the ex parte temporary restraining order "were completely without merit, were made primarily to harass or maliciously injure, or falsely asserted a material fact" (*Parkchester S. Condominium Inc. v Hernandez*, 71 AD3d 503, 504 [2010]).

Nor was the challenged conduct "undertaken primarily to delay or prolong the resolution of the litigation" (22 NYCRR 130-1.1 [c] [2]; see *Sakow v Columbia Bagel, Inc.*, 32 AD3d 689 [2006]). *421The record establishes that pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.7 (f), respondent's attorney was notified in advance of the date, time, and place where the application seeking a TRO would be made.

Furthermore, there was no evidence that respondent was harmed by the issuance of the TRO. The stipulation that he entered into in which the parties agreed, inter alia, "not to pursue any outstanding demands for arbitration" pending the court's final ruling on the April 2010 petition provided the same relief that petitioners obtained through the TRO. Concur—Mazzarelli, J.P., Sweeny, Renwick, Richter and Manzanet-Daniels, JJ. [Prior Case History: 2010 NY Slip Op 32450(U).]