

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

Keshner v. Hein Waters & Klein

2020 NY Slip Op 03906 (N.Y. Ct. App. 2020) · No. 2018-04357 · Decided July 15, 2020

SUMMARY

The Appellate Division, Second Department dismissed as academic an appeal from an order addressing reargument of a motion to dismiss a legal malpractice claim. The underlying order had been vacated and replaced by a subsequent Supreme Court order, eliminating the basis for the appeal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Ruth C. Balkin, J.P.; Jeffrey A. Cohen, J.; Robert J. Miller, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	July 15, 2020
DOCKET	2018-04357
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants appealed from an order granting the plaintiff leave to reargue opposition to a CPLR 3211(a) motion to dismiss and, upon reargument, denying dismissal of the legal-malpractice cause of action. The plaintiff moved to dismiss the appeal as academic because the lower court later vacated the appealed order.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Hein Waters & Klein, et al. v. Maurice Keshner

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appeal from the February 23, 2018 order should be dismissed as academic because that order had been vacated and superseded by the September 27, 2018 order.

HOLDINGS

1. The appeal must be dismissed as academic because the order appealed from was vacated by a later order of the Supreme Court.

KEY QUOTATIONS

“As the order entered February 23, 2018, was vacated by the order entered September 27, 2018, the appeal from the order entered February 23, 2018, must be dismissed.” ([*1])

FACTUAL BACKGROUND

Maurice Keshner brought an action, among other claims, to recover damages for legal malpractice against Hein Waters & Klein and other defendants. The defendants moved under CPLR 3211(a) to dismiss the complaint, and the Supreme Court initially dismissed the legal-malpractice cause of action. The Supreme Court subsequently issued an order granting reargument, vacating the prior dismissal determination, and later entered an order vacating and replacing the February 23, 2018 order.

PROCEDURAL HISTORY

The Supreme Court, Queens County, initially granted defendants' motion to dismiss the legal-malpractice cause of action. It later granted the plaintiff's motion for leave to reargue and vacated the prior dismissal determination. While the appeal from that order was pending, the Supreme Court entered a September 27, 2018 order correcting and vacating the February 23, 2018 order and substituting a new order. The Appellate Division dismissed the appeal because the order being appealed had been vacated.

DISPOSITION

dismissed

OPINION

PER CURIAM.

Keshner v Hein Waters & Klein (2020 NY Slip Op 03906) Keshner v Hein Waters & Klein 2020 NY Slip Op 03906 Decided on July 15, 2020 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 July 15, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RUTH C. BALKIN, J.P.

JEFFREY A. COHEN ROBERT J. MILLER COLLEEN D. DUFFY, JJ. 2018-04357 (Index No. 711923/16) [*1]Maurice Keshner, respondent, vHein Waters & Klein, et al., appellants. Abrams Garfinkel Margolis Bergson, LLP, New York, NY (Robert J. Bergson and Andrew W. Gefell of counsel), for appellants. Andrew Lavoott Bluestone, New York, NY, for respondent.

In an action, inter alia, to recover damages for legal malpractice, the defendants appeal from an order of the Supreme Court, Queens County (Leonard Livote, J.), entered February 23, 2018. The order, insofar as appealed from, granted the plaintiff's motion for leave to reargue his opposition to the defendants' prior motion pursuant to CPLR 3211(a) to dismiss the complaint, which had been granted in an order of the same court entered July 26, 2017, and, upon reargument, vacated the determination in the order entered July 26, 2017, granting that branch of the defendants' prior motion which was pursuant to CPLR 3211(a) to dismiss the cause of action alleging legal malpractice and thereupon denied that branch of the defendants' prior motion.

DECISION & ORDER Motion by the plaintiff, inter alia, to dismiss the appeal on the ground that it has been rendered academic by an order of the same court entered September 27, 2018. By decision and order on motion of this Court dated February 7, 2019, that branch of the motion which is to dismiss the appeal was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is ORDERED that the branch of the motion which is to dismiss the appeal is granted; and it is further, ORDERED that the appeal is dismissed, without costs or disbursements.

In an order entered September 27, 2018, the Supreme Court, inter alia, granted that branch of the defendants' motion which was to correct an order entered February 23, 2018, vacated the order entered February 23, 2018, and set forth a substituted order therefor.

As the order entered February 23, 2018, was vacated by the order entered September 27, 2018, the appeal from the order entered February 23, 2018, must be dismissed. BALKIN, J.P., COHEN, MILLER and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court