

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

P.S. Fin., LLC v. Eureka Woodworks, Inc.

2023 NY Slip Op 00878 (App. Div. 2023) · No. 2019-13095 · Decided February 15, 2023

SUMMARY

The New York Supreme Court, Appellate Division, Second Department dismissed an appeal by Parker Law Firm, Ltd., and Tim S. Parker. The court held that no appeal lies from an order denying reargument and that the challenge to an arbitration directive was academic in light of the court's determination in a related appeal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Linda Christopher, J.; William G. Ford, J.; Barry E. Warhit, J.
JURISDICTION	New York
DECIDED	February 15, 2023
DOCKET	2019-13095
DISPOSITION	dismissed
PROCEDURAL POSTURE	The attorney defendants appealed from an order denying their motion for leave to reargue a personal-jurisdiction dismissal motion, denying related summary-judgment or personal-jurisdiction relief, and denying their motion to vacate an order directing them to arbitrate.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	Parker Law Firm, Ltd., Tim S. Parker v. P.S. Finance, LLC

TOPICS

- motions to dismiss
- motion for reconsideration
- personal jurisdiction
- arbitration
- appellate procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- contracts
- commercial litigation

QUESTIONS PRESENTED

1. Whether an appeal lies from an order denying leave to reargue a prior motion.
2. Whether the appeal from the denial of the motion to vacate the arbitration directive was academic in light of the Appellate Division's determination in a related appeal.

HOLDINGS

1. No appeal lies from an order denying reargument; therefore, the appeal from that portion of the November 8, 2019 order was dismissed.
2. The appeal from the portion of the order denying the motion to vacate the arbitration directive was dismissed as academic in light of the court's determination in a related appeal.

FACTUAL BACKGROUND

P.S. Finance brought an action, inter alia, to recover damages for breach of contract against Eureka Woodworks, Inc. and others. The attorney defendants challenged the court's personal jurisdiction and sought summary judgment or dismissal, while also seeking to vacate a sua sponte directive requiring them to arbitrate the claims. The appeal concerned an order denying reargument and related relief.

PROCEDURAL HISTORY

P.S. Finance commenced an action, including a breach-of-contract claim, by motion for summary judgment in lieu of complaint under CPLR 3213. The Supreme Court, Richmond County, in a December 14, 2017 order effectively denied the attorney defendants' prior dismissal and summary-judgment requests as academic and sua sponte directed them to arbitrate. The attorney defendants later moved to reargue and to vacate the arbitration directive; the Supreme Court denied that motion on November 8, 2019, and the attorney defendants appealed. The Appellate Division dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Doctors for Surgery, PLLC v Aristide, 192 AD3d 991, 991
- P.S. Finance, LLC v Eureka Woodworks, Inc., Appellate Division Docket No. 2019-08723 (decided herewith)

OPINION

PER CURIAM.

P.S. Fin., LLC v Eureka Woodworks, Inc. (2023 NY Slip Op 00878) P.S. Fin., LLC v Eureka Woodworks, Inc. 2023 NY Slip Op 00878 Decided on February 15, 2023 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 February 15, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P. LINDA CHRISTOPHER WILLIAM G. FORD BARRY E. WARHIT, JJ. 2019-13095 (Index No. 150833/17) [*1]P.S. Finance, LLC, etc., respondent, vEureka Woodworks, Inc., defendant, Parker Law Firm, Ltd., et al., appellants. Richard A. Rosenzweig, Staten Island, NY, for appellants.

Raul J. Sloezen, Yonkers, NY, for respondent. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, commenced by motion for summary judgment in lieu of complaint pursuant to CPLR 3213, the defendants Parker Law Firm, Ltd., and Tim S. Parker appeal from an order of the Supreme Court, Richmond County (Orlando Marrazzo, Jr., J.), dated November 8, 2019.

The order denied the motion of the defendants Parker Law Firm, Ltd., and Tim S. Parker for leave to reargue those defendants' prior motion pursuant to CPLR 3211(a)(8) to dismiss the action insofar as asserted against them for lack of personal jurisdiction, and those branches of the prior cross-motion of the defendants and nonparty Harry Wilk which were for summary judgment dismissing the action insofar as asserted against the defendants Parker Law Firm, Ltd., and Tim S. Parker or, in the alternative, to dismiss the action insofar as asserted against the defendants Parker Law Firm, Ltd., and Tim S. Parker for lack of personal jurisdiction, which had been, in effect, denied, as academic, in an order of the same court dated December 14, 2017, and to vacate so much of the order dated December 14, 2017, as, sua sponte, directed the defendants Parker Law Firm, Ltd., and Tim S. Parker to arbitrate the claims against them.

Justice Warhit has been substituted for former Justice Roman (see 22 NYCRR 1250.1[b]). ORDERED that the appeal is dismissed, without costs or disbursements. The appeal from so much of the order dated November 8, 2019, as denied that branch of the motion of the defendants Parker Law Firm, Ltd., and Tim S. Parker (hereinafter together the attorney defendants) which was pursuant to CPLR 2221 for leave to reargue must be dismissed, as no appeal lies from an order denying reargument (see *Doctors for Surgery, PLLC v Aristide*, 192 AD3d 991, 991).

The appeal from so much of the order dated November 8, 2019, as denied that branch of the attorney defendants' motion which was to vacate so much of an order of the same court dated December 14, 2017, as, sua sponte, directed them to arbitrate the claims against them must be dismissed as academic in light of our determination in a related appeal from the order dated December 14, 2017 (see P.S.

Finance, LLC v Eureka Woodworks, Inc, _____ AD3d _____ [Appellate Division Docket No. 2019-08723; decided herewith]). CONNOLLY, J.P., CHRISTOPHER, FORD and WARHIT, JJ.,

concur. ENTER: Maria T. Fasulo Clerk of the Court

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