

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

Gilder v. Stern

2023 NY Slip Op 01839 (App. Div. 2023) · No. Appeal No. 17646; M-573; M-911; Case No. 2022-02066 ·
Decided April 6, 2023

SUMMARY

The Appellate Division, First Department affirmed an order denying defendants’ motion to vacate a default order that granted plaintiff’s motion to reargue and, upon reargument, granted summary judgment in lieu of complaint. The court held that defendants failed to establish a meritorious defense, noting that an email describing amounts remitted and the basis for payment foreclosed an issue of fact; sanctions motions were denied.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kern, J.; González, J.; Scarpulla, J.; Pitt-Burke, J.
JURISDICTION	New York
DECIDED	April 6, 2023
DOCKET	Appeal No. 17646; M-573; M-911; Case No. 2022-02066
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion to vacate a prior default order that had granted plaintiff's motion to reargue and, upon reargument, granted plaintiff's motion for summary judgment in lieu of complaint.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Michael Stern et al. v. Warren Gilder

TOPICS

- default
- summary judgment
- motion for reconsideration
- civil procedure
- contracts

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

contracts

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion in denying defendants' motion to vacate the order entered upon their default.
2. Whether defendants demonstrated a meritorious defense to either the underlying motion for summary judgment in lieu of complaint or plaintiff's motion to reargue.

HOLDINGS

1. Supreme Court did not abuse its discretion in denying defendants' motion to vacate the default order because defendants failed to present a meritorious defense to the underlying motion or to plaintiff's motion to reargue.

KEY QUOTATIONS

“An email from defendant David Juracich specifically describes the amounts remitted to plaintiff and the basis for the payment, thus foreclosing any issues of fact.”

FACTUAL BACKGROUND

An email from defendant David Juracich described the amounts remitted to plaintiff and the basis for those payments. Defendants sought to vacate the order entered upon their default, but did not submit or identify evidence addressing the Juracich email. Defendant Stern submitted an affidavit, but the Appellate Division concluded that it did not satisfy defendants' burden or establish a meritorious defense.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on April 7, 2022 granting plaintiff's motion to reargue upon defendants' default and, upon reargument, granting summary judgment in lieu of complaint. The court entered a May 9, 2022 order denying defendants' motion to vacate the default order. The Appellate Division unanimously affirmed the May 9 order with costs.

DISPOSITION

affirmed

CASES CITED

- Matter of American Reliable Ins. Co. v. Delmonte, 189 A.D.3d 663, 663 (1st Dep't 2020)

OPINION

PER CURIAM.

Gilder v Stern (2023 NY Slip Op 01839) Gilder v Stern 2023 NY Slip Op 01839 Decided on April 06, 2023 Appellate Division, First 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 and Entered: April 06, 2023 Before: Manzanet-Daniels, J.P., Kern, González, Scarpulla, Pitt-Burke, JJ. Index No. 653042/21 Appeal No. 17646&M-573-M-911 Case No. 2022-02066 [*1]Warren Gilder, Plaintiff-Respondent, vMichael Stern et al., Defendants-Appellants.

Beys Liston & Mobargha LLP, New York (Joshua D. Liston of counsel), for appellants. Barclay Damon, LLP, New York (Michael J. Lane of counsel), for respondent. Order, Supreme Court, New York County (Laurence Love, J.), entered May 9, 2022, which denied defendants' motion to vacate a prior order, same court and Justice, entered April 7, 2022, which granted, upon defendants' default, plaintiff's motion to reargue, and upon reargument, granted plaintiff's motion for summary judgment in lieu of complaint, unanimously affirmed, with costs.

Supreme Court did not abuse its discretion in denying defendants' motion to vacate the order entered on default, as defendants presented no meritorious defense either to the underlying motion for summary judgment in lieu of complaint or plaintiff's motion to reargue (CPLR 5015[a][1]; Matter of American Reliable Ins. Co. v Delmonte, 189 AD3d 663, 663 [1st Dept 2020]).

An email from defendant David Juracich specifically describes the amounts remitted to plaintiff and the basis for the payment, thus foreclosing any issues of fact. Notwithstanding the court's apparent failure to consider defendant Stern's affidavit in support of its motion to vacate the default order, we find the affidavit failed to satisfy the defendant's burden.

Notably, defendants have not submitted, or pointed to, any evidence that addresses the Juracich email. We have considered defendants' remaining contentions and find them unavailing.M-573 & M-911 — Gilder v Stern, et al. Motion and cross motion for sanctions, denied. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 6, 2023