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Appeals Court Reinstates Process Abuse Claim Against Lawyer

BY ANDREW DENNEY

A state appeals court has reinstated an abuse of process claim against an attorney who repeatedly tried to enforce a judgment even after being told the judgment had been entered in error.

Manhattan attorney Kenneth Kutner represented a co-op owner in a 2010 lawsuit against X-Act Contracting, in which the company was accused of botching a renovation. The company settled with the plaintiff for \$5,000 to be paid in installments.

Kutner accused the contractor of missing its third payment and sought an \$8,782 judgment against the company.

Paul Solda, a Manhattan solo representing X-Act, produced documents showing X-Act made its payments, but Kutner countered that the documents were ineligible and issued a restraining notice on X-Act's bank account.

In 2014, Civil Court Judge Jennifer Schecter ordered Kutner to pay \$3,450 for frivolous conduct in *Flanders v. X-Act Contracting*, TS-300372 (NYLJ, May 16, 2014).

Citing business losses, X-Act then sued Kutner, alleging abuse of process and other claims.

Manhattan Supreme Court Justice Debra James found X-Act's claims involved the same series of transactions as the Civil Court case and were thus barred by the doctrine of res judicata.

But on Thursday, a unanimous panel of the Appellate Division, First Department, said it disagreed with James, finding X-Act's suit for damages dealt with a different series of transactions.

Justices Peter Tom, Rolando Acosta, Rosalyn Richter, Sallie Manzanet-Daniels and Marcy Kahn joined the ruling in *X-Act Contr. Corp. v Flanders*, 157719/14.

Solda said in an interview that the decision should send a message to attorneys who "misuse our powers."

"This decision serves as a lesson to all lawyers that we have to be held accountable for our actions," he said.

Neither Kutner nor his lawyer, Abrams Garfinkel Margolis Bergson partner Eric Post, responded to requests for comment.