

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 13-00406

PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND WHALEN, JJ.

GEOFFREY BOND AND SALLY T. BOOTY,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

THOMAS A. TURNER, MICHELLE M. TURNER,
DEFENDANTS-APPELLANTS,
AND VILLAGE OF LAKEWOOD, DEFENDANT-RESPONDENT.

DAMON MOREY LLP, BUFFALO (MICHAEL J. WILLETT OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (PAUL V. WEBB, JR., OF
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

GOODELL & RANKIN, JAMESTOWN (ANDREW W. GOODELL OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Chautauqua County (Timothy J. Walker, A.J.), entered July 26, 2012. The judgment, inter alia, directed defendants Thomas A. Turner and Michelle M. Turner to remove certain improvements from a right-of-way and awarded money damages to plaintiff Sally T. Booty.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: This Court issued an order on a prior appeal in this case (*Bond v Turner*, 78 AD3d 1490, *rearg denied* 81 AD3d 1387), and Thomas A. Turner and Michelle M. Turner (defendants) now appeal from the ensuing judgment issued by Supreme Court. Defendants simultaneously moved in the Court of Appeals for leave to appeal from the judgment, which would bring up for review our nonfinal order on the prior appeal, and the Court of Appeals dismissed the motion for leave to appeal "upon the ground that simultaneous appeals do not lie to both the Appellate Division and the Court of Appeals" (20 NY3d 904, 904). The Court of Appeals thereafter denied defendants' application for leave to reargue that motion (20 NY3d 1021). Defendants fail to raise any challenge to the judgment, however, and contend only that this Court erred with respect to our order in the prior appeal. Thus, defendants are in effect *again* moving for leave to reargue with respect to the prior order by which they were aggrieved (*see Bond*, 78 AD3d 1490, *rearg denied* 81 AD3d 1387), inasmuch as they are not further aggrieved by the judgment (*see generally Utility Servs.*

Contr., Inc. v Monroe County Water Auth., 90 AD3d 1661, 1663, 1v
denied 19 NY3d 803). We therefore dismiss defendants' appeal from the
judgment (see CPLR 5511).

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court