

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

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CA 23-00739

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, AND KEANE, JJ.

IN THE MATTER OF CAYUGA NATION,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DUSTIN PARKER, AND DUSTIN PARKER, DOING
BUSINESS AS PIPEKEEPERS TOBACCO & GAS,
RESPONDENTS-RESPONDENTS.
(APPEAL NO. 2.)

BARCLAY DAMON LLP, SYRACUSE (LEE ALCOTT OF COUNSEL), FOR
PETITIONER-APPELLANT.

NIXON PEABODY LLP, ALBANY (ERIK A. GOERGEN OF COUNSEL), FOR
RESPONDENTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Seneca County (Barry L. Porsch, A.J.), entered April 12, 2023. The order granted the motion of petitioner seeking leave to renew and reargue, and upon renewal and reargument, adhered to the prior determination denying the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In appeal No. 1, petitioner appeals from an order that denied its CPLR article 4 petition seeking recognition of a Cayuga Nation Civil Court (Nation Court) judgment against respondents, Dustin Parker and Dustin Parker, doing business as Pipekeepers Tobacco & Gas. In appeal No. 2, petitioner appeals from an order that, in effect, granted petitioner's motion for leave to renew and reargue with respect to the order in appeal No. 1 and, upon renewal and reargument, adhered to the prior determination.

At the outset, we note that, in deciding petitioner's motion for leave to renew and reargue, Supreme Court considered and rejected the substantive arguments raised by petitioner. Therefore, although the order in appeal No. 2 does not state as much, it is clear to this Court that the court, in effect, granted petitioner's motion insofar as it sought leave to renew and reargue and, upon renewal and reargument, adhered to its original determination. We therefore dismiss the appeal from the order in appeal No. 1 (*see Manes v State of New York*, 182 AD3d 1012, 1013 [4th Dept 2020], *lv denied* 35 NY3d 913 [2020]; *Loafin' Tree Rest. v Pardi* [appeal No. 1], 162 AD2d 985,

985 [4th Dept 1990]).

Addressing petitioner's contentions in appeal No. 2, we conclude that the court did not abuse its discretion in adhering to its determination to deny the petition seeking recognition of the Nation Court judgment (*see generally Unkechaug Indian Nation v Treadwell*, 192 AD3d 729, 733 [2d Dept 2021]).

Entered: July 3, 2024

Ann Dillon Flynn
Clerk of the Court