# *Amalgamated Bank v Helmsley-Spear, Inc.*

Court of Appeals of New York

June 1, 2015, Argued; June 25, 2015, Decided

No. 105

**Reporter**
25 N.Y.3d 1098 *; 35 N.E.3d 480 **; 14 N.Y.S.3d 312 ***; 2015 N.Y. LEXIS 1428 ****; 2015 NY Slip Op 05510

**[1]** Amalgamated Bank, Respondent, v Helmsley-Spear, Inc., Defendant, and Schneider & Schneider, Inc., et al., Intervenors-Appellants.

**Prior History:** Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered August 13, 2013. The Appellate Division order, insofar as appealed from, (1) reversed, on the law, an order of the Supreme Court, New York County (Shirley Werner Kornreich, J.; op *37 Misc 3d 1229[A], 964 NYS2d 57, 2012 NY Slip Op 52225[U] [2012]*), which had granted that branch of the motion of intervenors-defendants which was to vacate a default judgment entered against defendant; (2) denied that branch of the motion; and (3) reinstated the judgment.

Plaintiff commenced an action against a corporation and its employee alleging that the employee had negligently performed an appraisal. After a default judgment was entered against the corporation, plaintiff sought to enforce the judgment by collecting the proceeds that the corporation's former president had received from the sale of 99% of the total shares in the corporation on the ground that the sale was a fraudulent transfer of the corporation's assets. To accomplish the enforcement plaintiff commenced a supplemental proceeding against the former president and another corporation of which she was an officer and director. The former president and that **[****1]** other corporation then moved to intervene in the first action and to vacate the default judgment.

*Amalgamated Bank v Helmsley-Spear, Inc., 109 AD3d 418, 970 NYS2d 522, 2013 N.Y. App. Div. LEXIS 5519 (N.Y. App. Div. 1st Dep't, 2013)*, affirmed.

**Disposition:** **[****2]** Order, insofar as appealed from, affirmed, with costs, in a memorandum.

## Core Terms

intervenors, Memorandum, injustice, vacate, costs

## Headnotes/Summary

**Headnotes**

**Judgments — Default Judgment — Vacatur — Standing — Intervenors**

In an action that resulted in the entry of a default judgment against defendant corporation, defendant's former president and another corporation of which she was an officer and director, as intervenors, lacked standing to bring a motion to vacate the default judgment. To seek relief from a judgment or order, all that is necessary is that some legitimate interest of the moving party will be served and that judicial assistance will avoid injustice. The intervenors did not meet the second prong of that test because they failed to identify any facts that gave rise to a claim that injustice of any kind would be avoided by vacating the judgment.

**Counsel:** **[****3]** Christopher J. Sullivan, for appellants.

Tyler J. Kandel, for respondent.

**Judges:** Chief Judge Lippman and Judges Read, Pigott, Rivera, Abdus-Salaam, Stein and Fahey concur.

## Opinion

**[**480]** **[*1099]** **[***312]** Memorandum.

The order of the Appellate Division, insofar as appealed

from, should be affirmed, with costs.

**[*1100]** The intervenors lacked standing to bring a motion to vacate the default judgment. **[2]** "To seek relief from a judgment or order, all that is necessary is that **[**481] [***313]** some legitimate interest of the moving party will be served and that judicial assistance will avoid injustice" (*Oppenheimer v Westcott, 47 NY2d 595, 602, 393 NE2d 982, 419 NYS2d 908 [1979]* [internal quotation marks and citation omitted]). Here, however, the intervenors did not meet the second prong of that test because they failed to identify any facts that give rise to a claim that injustice of any kind would be avoided by vacating the judgment (*cf. Bond v Giebel, 101 AD3d 1340, 1342-1343, 956 NYS2d 267 [3d Dept 2012]*, *appeal dismissed*, *lv dismissed 21 NY3d 884, 988 NE2d 514, 965 NYS2d 777 [2013]*; *Lane v Lane, 175 AD2d 103, 105-106, 572 NYS2d 14 [2d Dept 1991])*.

Chief Judge Lippman and Judges Read, Pigott, Rivera, Abdus-Salaam, Stein and Fahey concur.

Order, insofar as appealed from, affirmed, with costs, in a memorandum.

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