

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

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CA 08-01154

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, AND GORSKI, JJ.

EVOLUTION IMPRESSIONS, INC.,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JAMES D. LEWANDOWSKI, DAVID HICKEY,
GREGORY MAREK, GIORGIO BRACAGLIA, AND
1 SOURCE PARTNERS, INC., DEFENDANTS-RESPONDENTS.

WOODS OVIATT GILMAN LLP, ROCHESTER (DONALD W. O'BRIEN, JR., OF
COUNSEL), FOR PLAINTIFF-APPELLANT.

ODORISI LAW FIRM, EAST ROCHESTER (TERRENCE C. BROWN-STEINER OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), entered July 26, 2007. The order denied the application of plaintiff for contempt sanctions.

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

Memorandum: Plaintiff appeals from an order denying its application for contempt sanctions based on defendants' failure to comply with the terms of the permanent injunction in an order and judgment entered on defendants' default. We conclude that this appeal must be dismissed as moot. On a prior appeal, we granted in its entirety that part of defendants' motion seeking to vacate the default order and judgment (*Evolution Impressions, Inc. v Lewandowski*, ___ AD3d ___ [Feb. 6, 2009]). Thus, inasmuch as the "underlying order [and judgment] upon which the contempt was based is abolished, 'the infraction of it is abolished also, and nothing remains on which a [civil contempt order] can be based' " (*Village of Honeoye Falls v Elmer*, 69 AD2d 1010, 1011).

Entered: March 27, 2009

JoAnn M. Wahl
Clerk of the Court