

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

782

CA 08-02054

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND GREEN, JJ.

VILLAGE OF WARSAW, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID ALMETER, DEFENDANT,
AND GEORGE ANNA ALMETER, DEFENDANT-APPELLANT.

GEORGE ANNA ALMETER, DEFENDANT-APPELLANT PRO SE.

BENJAMIN J. BONARIGO, P.L.L.C., BATAVIA (BENJAMIN J. BONARIGO OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Wyoming County (Robert C. Noonan, A.J.), entered September 4, 2008. The order, inter alia, held defendants in contempt of court.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law with costs and the motion is denied.

Memorandum: Supreme Court erred in granting plaintiff's motion to hold defendants in contempt of court for their failure to comply with that part of its April 1997 order providing that the third-floor apartment in a building owned by them "shall remain unoccupied until further order of this Court or upon the grant of authorization of the appropriate board and/or agency of [plaintiff]." "In order to prevail on a motion to punish a party for civil contempt, the movant must demonstrate that the party charged violated a clear and unequivocal court order, thereby prejudicing a right of another party to the litigation" (*Goldsmith v Goldsmith*, 261 AD2d 576, 577; see *Town of Lloyd v Moreno*, 297 AD2d 403, 404). The record establishes that in October 1997 defendants obtained authorization from plaintiff's Zoning Board of Appeals to convert the building "into a two[-]family dwelling with the third story of the structure being occupied by the residents of the second[-]floor apartment." Plaintiff has failed to demonstrate that defendants' subsequent conversion of the building into a three-family dwelling or that the occupancy of the third-floor apartment "violated a clear and unequivocal mandate" of the April 1997 order (*Matter of Willard v Meehan*, 35 AD3d 488, 489).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court