

State of New York
Court of Appeals

*Decided and Entered on the
twenty-eighth day of April, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2022-133

Robert Budwilowitz,
Appellant,

v.

Marc Nichols Associates et al.,
Respondents.

Appellant having moved for reargument in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

Judge Troutman took no part.



Heather Davis
Deputy Clerk of the Court

State of New York
Court of Appeals

*Decided and Entered on the
twenty-eighth day of April, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2022-133

Robert Budwilowitz,
Appellant,

v.

Marc Nichols Associates et al.,
Respondents.

Appellant having moved for reargument in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

Judge Troutman took no part.



Heather Davis
Deputy Clerk of the Court

State of New York
Court of Appeals

*Decided and Entered on the
sixth day of January, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2021-760

Robert Budwilowitz,
Appellant,

v.

Marc Nichols Associates et al.,
Respondents.

Appellant having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal, insofar as taken from the July 2021 Appellate Division order is dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution; and it is further

ORDERED, that the appeal, insofar as taken from the June 2021 Appellate Division order, is dismissed, without costs, upon the ground that no appeal lies from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question; and it is further


ORDERED, that the motion, insofar as it seeks leave to appeal from the July 2021 Appellate Division order, is dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution; and it is further

Appendix B Decision of New York State Court of Appeals motion for leave to appeal

Mo. No. 2021-760

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ORDERED, that the motion, insofar as treated as seeking leave to appeal from the June 2021 Appellate Division order, is otherwise denied.



John P. Asiello
Clerk of the Court

FILED: APPELLATE DIVISION - 1ST DEPT 06/01/2021 09:55 AM

2020-00857

NYSCEF DOC. NO. 11

Supreme Court of the State of New York

FILED NYSCEF: 06/01/2021

Appellate Division, First Judicial Department

Gische, J.P., Webber, Singh, Kennedy, JJ.

13967

ROBERT BUDWILOWITZ,
Plaintiff-Appellant,

Index No. 101292/16
Case No. 2020-00857

-against-

MARC NICHOLS ASSOCIATES, et al.,
Defendants-Respondents.

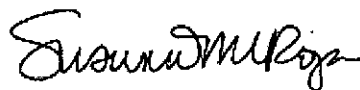
Robert Budwilowitz, appellant pro se.

Appeal from order, Supreme Court, New York County (Robert R. Reed, J.), entered October 11, 2019, which sua sponte dismissed the complaint for failure to comply with a prior order, unanimously dismissed, without costs.

The sua sponte order is not appealable as of right (*see* CPLR 5701[a][2]; *Sholes v Meagher*, 100 NY2d 333, 335 [2003]). Plaintiff's remedy was to move to vacate the order, and if that was denied, to appeal the denial of his motion to vacate (*id*; *see also Figiel v Met Food*, 48 AD3d 330 [1st Dept 2008]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 1, 2021



Susanna Molina Rojas
Clerk of the Court

Appendix D Sua sponte order Supreme Court New York County and dismissal of the case.

SET720014 ORDER DATED 10/10/2019 Pwd 10/10/2019

Page 1 of 2

Page 1

THE SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED
J.S.C. Justice

PART 43

Budwiewitz, Robert

INDEX NO. 101295/2016

MOTION DATE _____

MOTION SEQ. NO. _____

Mare Nichols Associates

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

No(s). _____

No(s). _____

No(s). _____

It is hereby

ORDERED that this matter is DISMISSED for failure to comply with this Court's order dated August 6, 2019.

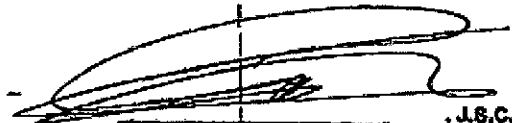
FILED

OCT 11 2019

COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/10/19


J.S.C.

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: **HON. ROBERT R. REED**
J.S.C.
Justice

PART **43**

Budwiczewitz, Robert

INDEX NO. **10/292/2016**

MOTION DATE _____

MOTION SEQ. NO. _____

Mare Nichols Associates

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

No(s) _____

Answering Affidavits — Exhibits _____

No(s) _____

Replying Affidavits _____

No(s) _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

The defendant having failed, without reasonable excuse, to appear at a status conference in Part 43 on August 1, 2019 at 11:00 a.m. pursuant to this Court's decision and order dated July 5, 2019 and the defendant having failed, without reasonable excuse, to appear at a previous status conference in this Part on January 10, 2019, it is hereby

ORDERED that, pursuant to Uniform Rule 202.27, the defendant is in default and the answer of defendant is stricken; and it is further

ORDERED that, on or before August 30, 2019, plaintiff shall serve a copy of this order with notice of entry upon, and file a note of issue and statement of readiness with, the Clerk of the General Clerk's Office (60 Centre Street, Room 119), and pay for the fee therefor; and it is further

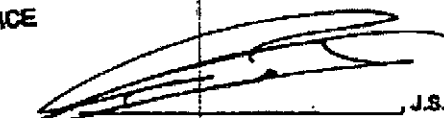
ORDERED that, upon said filing and the payment of the appropriate fee, the Clerk shall place this matter upon the trial calendar for an Inquest as to damages.

FILED

AUG 9 2019

**COUNTY CLERK'S OFFICE
NEW YORK**

Dated: **8/6/19**

 J.S.C.

1. CHECK ONE: _____ ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: _____ MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: _____ ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE