

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12241
E/cb

_____AD3d_____

Argued - September 8, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2005-01471

DECISION & ORDER

Federal National Mortgage Association, etc., appellant, v
Peter L. Katz, et al., respondents.

(Index No. 19840/03)

Solomon & Siris, P.C., Uniondale, N.Y. (Stuart Siris and Bill Tsevis of counsel), for
appellant.

Dorfman, Knoebel, Conway, LLP, Nyack, N.Y. (David M. Ascher of counsel), for
respondent Spark Real Estate, Inc.

In an action pursuant to RPAPL article 15 to determine claims to certain real property,
the plaintiff appeals from an order of the Supreme Court, Westchester County (Tolbert, J.), entered
January 5, 2005, which denied its motion for summary judgment and, upon searching the record,
awarded summary judgment to the defendants dismissing the complaint.

ORDERED that the order is affirmed, with costs to the respondent Spark Real Estate,
Inc.

Contrary to the plaintiff's contention, the Supreme Court properly denied its motion
for summary judgment since it failed to establish a prima facie entitlement to such relief (*see* CPLR
3212; *Ayotte v Gervasio*, 81 NY2d 1062).

Although the defendants did not move for summary judgment, the Supreme Court had
the authority pursuant to CPLR 3212(b) to search the record and award summary judgment to a
nonmoving party with respect to an issue that was the subject of the motion before the court (*see*

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Dunham v Hilco Constr. Co., 89 NY2d 425, 429-430; *Murray v Murray*, 28 AD3d 624; *Goldstein v County of Suffolk*, 300 AD2d 441, 442). Under the circumstances presented, the Supreme Court properly exercised that authority in awarding summary judgment to the defendants dismissing the complaint.

SCHMIDT, J.P., SANTUCCI, FISHER and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court