

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

D13610
G/cb

_____AD3d_____

Argued - December 11, 2006

GABRIEL M. KRAUSMAN, J.P.
ANITA R. FLORIO
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2006-02304

DECISION & ORDER

Donald Weidel, appellant, v Kaba Realty, LLC,
respondent, et al., defendants.

(Index No. 12795/05)

Steven Wimpfheimer, Great Neck, N.Y., for appellant.

Palmeri & Gaven, New York, N.Y. (John J. Palmeri of counsel), for respondent.

In an action, inter alia, to compel defendant Kaba Realty, LLC, to board up certain windows on the subject property, the plaintiff appeals from an order of the Supreme Court, Queens County (Polizzi, J.), dated February 7, 2006, which granted the defendant's motion to cancel a notice of pendency filed by the plaintiff on the subject property.

ORDERED that the order is affirmed, with costs.

The Supreme Court correctly determined that the plaintiff's action was not one seeking to affect "the title to, or the possession, use or enjoyment of, real property" (CPLR 6501). Accordingly, it properly granted the defendant's motion to cancel the notice of pendency filed by the plaintiff against the subject property (*see 5303 Realty Corp. v O & Y Equity Corp.*, 64 NY2d 313, 323; *Braunston v Anchorage Woods*, 10 NY2d 302, 305-306; *Raimonda v Cahn*, 26 AD2d 939; *see also Shkolnik v Krutoy*, 32 AD3d 536; *Tsiporin v Ziegel*, 203 AD2d 451).

January 23, 2007

WEIDEL v KABA REALTY, LLC

In light of this determination, we need not address the parties' remaining contentions.

KRAUSMAN, J.P., FLORIO, LUNN 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 initial "J".

James Edward Pelzer
Clerk of the Court

January 23, 2007

WEIDEL v KABA REALTY, LLC