

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

D14091
W/gts

_____AD3d_____

Argued - January 25, 2007

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2005-10044

DECISION & ORDER

Walter Schwartz, respondent, v
Michele Farkas Miltz, appellant.

(Index No. 11127/04)

Weil & Kestenbaum, P.C., Bayside, N.Y. (Alan Kestenbaum of counsel), for appellant.

Anthony Mascolo, Kew Gardens, N.Y., for respondent.

In an action for the partition and sale of real property, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), dated October 6, 2005, as denied that branch of her cross motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

That branch of the defendant's motion which was for summary judgment dismissing the complaint was properly denied since the defendant did not make a prima facie showing of entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

In light of our determination, we need not reach the parties' remaining contentions.

MASTRO, J.P., FISHER, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

February 27, 2007

SCHWARTZ v MILTZ