

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

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_____AD3d_____

Submitted - May 21, 2007

REINALDO E. RIVERA, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-11266

DECISION & ORDER

James Nelson, plaintiff/counterclaim defendant-appellant, v Patricia McKay, defendant/counterclaim plaintiff-respondent.

(Index No. 4048/05)

Monte J. Rosenstein, P.C., Middletown, N.Y., for plaintiff/counterclaim defendant-appellant.

Bloom & Bloom, P.C., New Windsor, N.Y. (Daniel J. Bloom and Steven A. Kimmel of counsel), for defendant/counterclaim plaintiff-respondent.

In an action, in effect, to impose a constructive trust on certain real property, in which the defendant counterclaimed for, inter alia, a direction that she convey title to the property into the parties' names as joint tenants with right of survivorship, the plaintiff appeals from a judgment of the Supreme Court, Orange County (Peter C. Patsalos, J.H.O.), dated November 8, 2006, which, after a nonjury trial, and upon a decision of the same court dated September 30, 2006, inter alia, imposed a constructive trust in the form of a tenancy in common in the name of the plaintiff and the defendant.

ORDERED that the judgment is affirmed, with costs.

Upon review of a determination rendered after a nonjury trial, this court's authority "is as broad as that of the trial court," and this court may "render the judgment it finds warranted by the facts, taking into account in a close case 'the fact that the trial judge had the advantage of seeing the witness'" (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499, quoting *York Mtge. Corp. v Clotar Constr. Corp.*, 254 NY 128, 133-134; see *Vizzari v*

June 26, 2007

Page 1.

NELSON v McKay

Hernández, 1 AD3d 431, 431-432). We discern no reason to disturb the Supreme Court's determination, inter alia, imposing a constructive trust in favor of the plaintiff upon one half of the interest in the subject property currently deeded to the defendant (see *Simonds v Simonds*, 45 NY2d 233, 241; *Sharp v Kosmalksi*, 40 NY2d 119, 121; *Ruiz v Meloney*, 26 AD3d 485, 486; *Nastasi v Nastasi*, 26 AD3d 32, 38; *Eickler v Pecora*, 12 AD3d 635, 636; *Williams v Lynch*, 245 AD2d 715, 716-717).

RIVERA, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court