

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

D16787
Y/hu

_____AD3d_____

Submitted - October 17, 2007

STEPHEN G. CRANE, J.P.
DAVID S. RITTER
STEVEN W. FISHER
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2007-02497
2007-05941

DECISION & ORDER

Menahem Harari, appellant, v Murad Giundi,
respondent.

(Index No. 47397/03)

Stock & Carr, Mineola, N.Y. (Thomas J. Stock and Victor A. Carr of counsel), for
appellant.

Richard T. Lau, Jericho, N.Y. (Joseph G. Gallo of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Kramer, J.), dated January 26, 2007, which granted the defendant's motion for summary judgment dismissing the complaint, and (2) a judgment of the same court entered April 3, 2007, which, upon the order, was in favor of the defendant and against him dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that the defendant is awarded one bill of costs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see Matter of Aho*, 39

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NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The defendant demonstrated his right to summary judgment by establishing, *prima facie*, that he did not make a special use of the area in question, and, in opposition, the plaintiff failed to raise a triable issue of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

The plaintiff's remaining contention is without merit.

CRANE, J.P., RITTER, FISHER, COVELLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court