

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

D17235
W/cb

_____AD2d_____

Argued - November 5, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
PETER B. SKELOS
JOSEPH COVELLO, JJ.

2007-04270

DECISION & ORDER

Deonarine Ramnarain, respondent, v Chandradat
Ramnarain, appellant, et al., defendant.

(Index No. 24620/98)

Stephen David Fink, Forest Hills, N.Y., for appellant.

Goldberg, Scudieri, Lindenberg & Block, P.C., New York, N.Y. (Paul S. Block of
counsel), for respondent.

In an action, inter alia, for the partition of real property, the defendant Chandradat Ramnarain appeals from an order of the Supreme Court, Queens County (Schulman, J.), entered February 7, 2007, which granted the plaintiff's motion pursuant to CPLR 3404 to restore the action to the trial calendar.

ORDERED that the order is reversed, on the law, with costs, and the motion is denied.

Stipulations of settlement which put an end to litigation are favored by our courts and will not be set aside in the absence of fraud, collusion, mistake, or such other factors as would vitiate a contract (*see Chan v Barry*, 36 AD3d 579; *Fourth Ocean Putnam Corp. v Suburbia Fed. Sav. & Loan Assn.*, 124 AD2d 550; *Heimuller v Amoco Oil Co.*, 92 AD2d 882). In general, the settlement of an action renders pending appeals academic (*see Matter of Garrick v Tomlins*, 24 AD3d 763; *H.L. & F.H. Realty Corp. v Gulf Ins. Co.*, 19 AD3d 646; *Hospital for Joint Diseases v ELRAC, Inc.*, 11 AD3d 432; *cf. Matter of Shah v De Buono*, 95 NY2d 148). Here, the plaintiff settled this action in May 2005, without the reservation of any rights he might obtain pursuant to an appeal then pending

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before this Court. Consequently, the settlement, in effect, rendered the plaintiff's prior appeal academic. Since the plaintiff did not otherwise demonstrate fraud, collusion, or mistake, or such other factors as would vitiate a contract, his motion to restore this action to the trial calendar should have been denied.

MILLER, J.P., RITTER, SKELOS and COVELLO, 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