

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

D17370
C/hu

_____AD3d_____

Submitted - November 28, 2007

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

2007-01338
2007-02347

DECISION & ORDER

M & W Registry, Inc., respondent, v Darshan
Shah, appellant, et al., defendants (and another title).

(Index No. 33774/99)

Meyers Tersigni Feldman & Gray LLP, New York, N.Y. (Andrea Tersigni and
Anthony L. Tersigni of counsel), for appellant.

Ryan S. Karben, Monsey, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant Darshan Shah appeals from (1) an order of the Supreme Court, Kings County (Schmidt, J.), dated February 9, 2007, which denied the motion by the plaintiff's attorney to withdraw as counsel for the plaintiff, and (2) an order of the same court dated February 13, 2007, which, among other things, granted those branches of the plaintiff's motion which were to amend the complaint and vacate the note of issue.

ORDERED that the appeal from the order dated February 9, 2007, is dismissed, without costs or disbursements, as the defendant was not aggrieved thereby (*see* CPLR 5511); and it is further,

ORDERED that the appeal from the order dated February 13, 2007, is dismissed as abandoned (*see* 22 NYCRR 670.8[e]), without costs or disbursements.

December 18, 2007

Page 1.

In his brief on appeal, the defendant raises no argument addressed to the issues contained in the order dated February 13, 2007. Hence, he has abandoned his appeal from that order (*see Poughkeepsie-Highland R.R. Bridge Co. v Central Hudson Gas & Elec. Corp.*, 278 AD2d 468, 470). The defendant's argument that the complaint should have been dismissed was not properly raised before the motion court and thus appropriately was not addressed in the order dated February 9, 2007 (*see CPLR 2215; Thomas v Drifters*, 219 AD2d 639, 640; *cf. New York State Div. of Human Rights v Oceanside Cove II Apt. Corp.*, 39 AD3d 608, 609; *Khaolaead v Leisure Video*, 18 AD3d 820, 821). Accordingly, any arguments concerning that issue are not properly before this Court.

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