

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

D18300  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 30, 2008

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON, JJ.

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2007-10615  
2007-10856

DECISION & ORDER

Shifra Mendelovitz, appellant,  
v Elyahu Cohen, et al., respondents.

(Index No. 17390/05)

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Heller, Horowitz & Feit, P.C., New York, N.Y. (Eli Feit and Stuart A. Blander of counsel), for appellant.

Proskauer Rose, LLP, New York, N.Y. (Richard M. Goldstein, Harry Frischer, and Matthew J. Morris of counsel), for respondents.

In an action, inter alia, to recover damages for breach of a joint venture agreement, the plaintiff appeals from (1) a decision of the Supreme Court, Kings County (Demarest, J.), dated October 31, 2007, and (2) an order of the same court, also dated October 31, 2007, which, in effect, granted those branches of the defendants' motion which were to quash subpoenas served on the nonparties Regal Home Collections, Inc., Mayer Rispler, Nat Safern, and Harri Shan, and denied those branches of her cross motion which were to compel compliance with the subpoenas.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

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

ORDERED that one bill of costs is awarded to the respondents.

March 11, 2008

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The Supreme Court providently exercised its discretion in, inter alia, quashing the subpoenas served upon the nonparties Regal Home Collections, Inc., Mayer Rispler, Nat Safern, and Harri Shan, as the discovery sought is not material and necessary to the prosecution of the action (*see White Bay Enters. Ltd. v Newsday, Inc.*, 288 AD2d 211; *see also Riverside Capital Advisors, Inc. v First Secured Capital Corp.*, 28 AD3d 457, 459-460; *Golden Mark Maintenance, Ltd. v Alarcon*, 265 AD2d 377).

MASTRO, J.P., FISHER, FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court