

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

D18457
G/kmg

_____AD3d_____

Submitted - February 19, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-03885

DECISION & ORDER

Felice J. Muraca, appellant, v Mark Meyerowitz,
et al., respondents, et al., defendants.

(Index No. 3241/05)

Mitchell Dranow, Mineola, N.Y., for appellant.

Meyer, Suozzi, English & Klein, P.C., Garden City, N.Y. (Michael A. Ciaffa of
counsel), for respondents.

In an action pursuant to Real Property Actions and Proceedings Law article 15, inter alia, to establish riparian dividing lines between adjoining parcels of property, the plaintiff appeals from an order of the Supreme Court, Nassau County (Phelan, J.), dated March 28, 2007, which denied his motion to hold the defendants Mark Meyerowitz and Karen Meyerowitz in criminal contempt for their alleged failure to comply with a judgment of the same court entered October 12, 2006.

ORDERED that the order is affirmed, with costs.

“An essential element of criminal contempt is willful disobedience” (*Dalessio v Kressler*, 6 AD3d 57, 66). Indeed, “[t]o be found guilty of criminal contempt, the contemnor usually must be shown to have violated the order [or judgment] with a higher degree of willfulness than is required in a civil contempt proceeding” (*Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y.*, 70 NY2d 233, 240). Moreover, unlike a civil contempt proceeding, proof of guilt must be established beyond a reasonable doubt in a criminal contempt proceeding (*see County of Rockland v Civil Serv. Empls. Assn.*, 62 NY2d 11, 16; *N.A. Dev. Co. v Jones*, 99 AD2d 238).

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Here, we agree with the Supreme Court that the plaintiff failed to make the prima facie showing of willful disregard of a court order by the defendants Mark Meyerowitz and Karen Meyerowitz necessary to support a finding of criminal contempt. While those defendants may have misinterpreted a certain provision of the judgment, the record nevertheless supports the conclusion that they made reasonable attempts to comply with that provision soon after the entry of the judgment. Under such circumstances, a finding of criminal contempt was not warranted (*cf. Ferraro v Ferraro*, 272 AD2d 510).

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court