

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

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ROBERT A. LIFSON, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
MARK C. DILLON, JJ.

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2007-07891

DECISION & JUDGMENT

In the Matter of Dino Caroselli, petitioner,  
v Plummer Lott, etc., respondent.

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Dino Caroselli, Wallkill, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of  
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to direct the respondent, Plummer Lott, a Justice of the Supreme Court, Kings County, to vacate an order of the same court dated May 17, 2007, denying the petitioner's motion pursuant to CPL article 440.

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

LIFSON, J.P., RITTER, SANTUCCI and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

April 8, 2008

MATTER OF CAROSELLI v LOTT