

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

D19320
Y/kmg

_____AD3d_____

PETER B. SKELOS, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-01651

DECISION, ORDER & JUDGMENT

In the Matter of Rosemary Toriola, petitioner,
v Supreme Court State of New York Appellate
Term 2nd and 11th Judicial Districts, et al.,
respondents.

Rosemary Toriola, Jamaica, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Roberta L. Martin of
counsel), for respondent Justices and Judges.

Bruce Goldstein, Brooklyn, N.Y., for respondents Joseph Kahen and Mehrdad Kahen.

Proceeding pursuant to CPLR article 78 in the nature of mandamus and prohibition, inter alia, to compel the Appellate Term, Second and Eleventh Judicial Districts, to, among other things, annul certain orders issued by that court and the Civil Court, Kings County. Separate motions by the petitioner, inter alia, for leave to enter a judgment against the respondents. Cross motion by the respondents Joseph Kahen and Mehrdad Kahen, inter alia, to dismiss the proceeding, to impose sanctions on the petitioner, and to enjoin the petitioner from making any additional motions or commencing any additional proceedings regarding the subject property. By decision and order on motion of this Court dated March 31, 2008, the motions and cross motion were held in abeyance pending the payment of the filing fee by the petitioner. Additional motions by the petitioner (1), inter alia, to dismiss the cross motion and for judgment pursuant to CPLR 3213, and (2), inter alia, to stay the proceeding pending the issuance of an order sanctioning the attorney for the respondents Joseph Kahen and Mehrdad Kahen.

Upon the papers filed in support of the motions and the cross motion and the papers

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filed in opposition and relation thereto, it is,

ORDERED that the branch of the cross motion which is to dismiss the proceeding is granted; and it is further,

ORDERED that the branch of the cross motion which is to enjoin the petitioner from making any additional motions or commencing any additional proceedings in this Court regarding the property located at 170-26 Jamaica Avenue, Jamaica, N.Y., 11432, without leave of this Court is granted; and it is further,

ORDERED that the petitioner is enjoined from making any additional motions or commencing any additional proceedings in this Court regarding the property located at 170-26 Jamaica Avenue, Jamaica, N.Y., 11432, without leave of this Court; and it is further,

ORDERED that the cross motion is otherwise denied; and it is further,

ORDERED that the motions by the petitioner are denied; and it is further,

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

"Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court — in cases where judicial authority is challenged — acts or threatens to act either without jurisdiction or in excess of its authorized powers" (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). Similarly, 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 here has failed to demonstrate a clear legal right to the relief sought.

SKELOS, J.P., DILLON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


James Edward Perez
Clerk of the Court

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