

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

D19638  
O/kmg

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Submitted - May 14, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2007-07771

DECISION & ORDER

Peter Barniak, respondent, v Suzanne  
Richter, et al., appellants.

(Index No. 3647/05)

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Jules A. Epstein, P.C., Garden City, N.Y., for appellants.

James Thomas Murphy, Floral Park, N.Y. (Leslie W. Rubin of counsel), for  
respondent.

In an action, inter alia, to set aside a transfer of real property as a fraudulent conveyance under the Debtor and Creditor Law, the defendants appeal from a judgment of the Supreme Court, Nassau County (Martin, J.), dated August 20, 2007, which, upon an order of the same court dated March 23, 2007, granting the plaintiff's motion pursuant to CPLR 3126 to strike the answer for failure to comply with a discovery order, inter alia, set aside the subject conveyance as fraudulent.

ORDERED that the judgment is affirmed, with costs.

The determination whether to strike a pleading for failure to comply with discovery orders lies within the sound discretion of the trial court (*see* CPLR 3126[3]; *Maignan v Nahar*, 37 AD3d 557; *Matter of Cohn*, 15 AD3d 655; *Bates v Baez*, 299 AD2d 382; *Patterson v Greater N.Y. Corp. of Seventh Day Adventists*, 284 AD2d 382, 383). Under the circumstances of this case, the Supreme Court providently exercised its discretion in granting the plaintiff's motion to strike the

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answer (see CPLR 3126[3]; *Casey v Casey*, 39 AD3d 579, 580; *Pashayan v Corson*, 306 AD2d 259; cf. *Harris v City of New York*, 211 AD2d 663, 664).

The defendants' remaining contentions are without merit.

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, 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