

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

D20312  
G/hu

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

Argued - June 23, 2008

ROBERT A. SPOLZINO, J.P.  
ROBERT A. LIFSON  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS, JJ.

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2007-10318

DECISION & ORDER

Sharon Kass, appellant, v Janice Zaslav, et al.,  
respondents.

(Index No. 3341/07)

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Raymond T. Mundy, Pomona, N.Y., for appellant.

Steven Lee Zaslav, P.C., New York, N.Y., for respondents.

In an action, inter alia, for a judgment declaring that the defendants wrongly deprived the plaintiff of the enjoyment of her property, the plaintiff appeals from an order of the Supreme Court, Rockland County (Garvey, J.), dated September 25, 2007, which denied her motion to strike the sixth affirmative defense and to dismiss the counterclaim asserted in the defendants' separate answers, and granted that branch of the defendants' joint cross motion which was, in effect, to dismiss the complaint pursuant to CPLR 3211(a)(7).

ORDERED that the order is affirmed, with costs.

In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), a court "should 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Parsippany Constr. Co., Inc. v Clark Patterson Assoc., P.C.*, 41 AD3d 805, 806, quoting *Leon v Martinez*, 84 NY2d 83, 87-88). Applying this standard here, the complaint does not state a cause of action against the defendants. Accordingly, the Supreme Court properly granted that branch of the cross motion which was to dismiss the complaint.

October 28, 2008

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The parties' remaining contentions are without merit.

SPOLZINO, J.P., LIFSON, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court