

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

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_____AD3d_____

Submitted- November 13, 2008

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2007-07928

DECISION & ORDER

Joyce Blidgen, et al., respondents, v Estate
of Everton A. King, et al., appellants.

(Index No. 12548/07)

Mirkin & Gordon, P.C., Great Neck, N.Y. (E. Lisa Forte of counsel), for appellants.

Victor M. Wilson, Brooklyn, N.Y., for respondents.

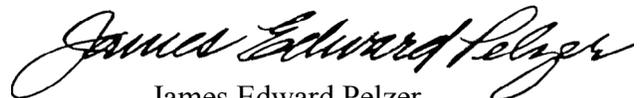
Appeal by the defendants from an order of the Supreme Court, Kings County (Schack, J.) dated June 29, 2007, which granted the plaintiffs' motion to, among other things, "[impose] a constructive trust on the property located at 639 East 28th Street, Brooklyn."

ORDERED that the order is reversed, on the law, with costs, and the plaintiffs' motion is denied.

The plaintiffs, in effect, sought summary judgment (*see* CPLR 3212) in connection with a claim based on a theory of constructive trust that had apparently never been pleaded in any complaint. The record contains no indication that any civil action or proceeding had ever been commenced (*see* CPLR 103[b]; 304). Accordingly, there being no pending action or proceeding, the defendants' motion should have been denied.

RIVERA, J.P., DILLON, COVELLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 9, 2008

BLIDGEN v ESTATE OF KING