

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

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_____AD3d_____

Submitted - November 12, 2008

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2008-05450

DECISION & ORDER

In the Matter of Walter Moorman, etc., appellant,
v Meadow Park Rehabilitation and Health Care
Center, LLC, respondent.

(Index No. 7619/08)

Harriette N. Boxer, New York, N.Y., for appellant.

Appeal from an order of the Supreme Court, Queens County (Dollard, J.), entered June 2, 2008, which denied the petitioner's application to remove an action pending in the Civil Court of the City of New York, to the Supreme Court, Queens County.

ORDERED that the order is affirmed, without costs or disbursements.

The Supreme Court did not improvidently exercise its discretion in denying the petitioner's application to remove the action from the Civil Court of the City of New York to the Supreme Court, Queens County (*see* CPLR 325[b]). The application was based upon the premise that the petitioner intended to assert a counterclaim seeking damages in excess of the Civil Court's \$25,000 jurisdictional limit. However, it is clear that the Civil Court has jurisdiction over counterclaims in excess of the monetary limitation (*see* NY Const, art VI, § 15[b]; Civil Court Act § 208[b]). Moreover, the Supreme Court properly declined to consider the new arguments or new grounds, asserted for the first time in the petitioner's reply papers, in support of the relief sought (*see*

December 16, 2008

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MATTER OF MOORMAN v MEADOW PARK REHABILITATION
AND HEALTH CARE CENTER, LLC

Matter of Allstate Ins. Co. v Dawkins, 52 AD3d 826; *Matter of Harleysville Ins. Co. v Rosario*, 17 AD3d 677; *Matter of TIG Ins. Co. v Pellegrini*, 258 AD2d 658).

RIVERA, J.P., FLORIO, ANGIOLILLO, McCARTHY and CHAMBERS, 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