

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

D23118
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_____AD3d_____

Submitted - April 1, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2008-06981

DECISION & ORDER

Joseph Casavecchia, Sr., etc., respondent, v William
W. Mizrahi, etc., et al., appellants.

(Index No. 6679/05)

Barry McTiernan & Wedinger, Staten Island, N.Y. (Laurel A. Wedinger of counsel),
for appellants.

Westerman Ball Ederer Miller & Sharfstein, LLP, Mineola, N.Y. (Jeffrey A. Miller
and Richard Gabriele of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the plaintiff has the exclusive right to manage the construction of a real estate project to be developed by the defendant Casa Mason Corp., and for rescission of a sale of shares of stock of the defendant Casa Mason Corp. to the defendant Chitoor Govindaraj, the defendants appeal from an order of the Supreme Court, Nassau County (Warshawsky, J.), entered July 2, 2008, which granted the plaintiff's motion to "restore" the action to the active calendar.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the plaintiff's motion to "restore" this action to the active calendar after it had been marked "disposed," given that CPLR 3404 does not apply to this pre-note of issue action (*see Lopez v Imperial Delivery Serv.*, 282 AD2d 190), there was no 90-day notice pursuant to CPLR 3216, and there was no order dismissing the complaint pursuant to 22

May 12, 2009

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NYCRR 202.27 (see *Burdick v Marcus*, 17 AD3d 388; *123X Corp. v McKenzie*, 7 AD3d 769; *Golan v Long Is. Jewish Med. Ctr.*, 7 AD3d 489, 490; *Lucious v Rutland Nursing Home of Kingsbrook Jewish Med. Ctr.*, 2 AD3d 412).

SKELOS, J.P., FLORIO, BALKIN and BELEN, 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