

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

D23638
Y/kmg

_____AD3d_____

Argued - May 7, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-10986

DECISION & ORDER

Ruby Holloway, plaintiff, v Joseph C. Placide,
et al., respondents, et al., defendants;
455 Bainbridge Street, LLC, nonparty-appellant.

(Index No. 2508/05)

Stim & Warmuth, P.C., Farmingville, N.Y. (Glenn P. Warmuth of counsel), for
nonparty-appellant.

Santoriella, DiThomas, P.C., Brooklyn, N.Y. (Aaron Depass of counsel), for
respondents.

In an action for ejectment, which was dismissed by order of the Supreme Court, Kings County (Partnow, J.), dated November 24, 2006, the nonparty, 455 Bainbridge Street, LLC, appeals, as limited by its brief, from so much of an order of the same court dated June 24, 2008, as (1) granted that branch of the motion of the defendants Joseph C. Placide and Marie L. Placide which was to “restore” the plaintiff’s action to “active” status and (2) granted that branch of the motion of the defendants Joseph C. Placide and Marie L. Placide which was for leave to commence a third-party action against it to the extent of permitting them to commence a third-party action that would include the first, third, and fourth causes of action set forth in their proposed third-party complaint.

ORDERED that the appeal from so much of the order as granted that branch of the motion of defendants Joseph C. Placide and Marie L. Placide which was to “restore” the plaintiff’s action to “active” status is dismissed on the ground that the nonparty-appellant was not aggrieved by that portion of the order (*see* CPLR 5511; *cf. Antar v Antar*, 247 AD2d 563); and it is further,

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ORDERED that the order is reversed insofar as reviewed, on the law, the facts, and in the exercise of discretion, and that the branch of the motion of defendants Joseph C. Placide and Marie L. Placide which was for leave to commence a third-party action against the nonparty-appellant is denied as unnecessary; and it is further,

ORDERED that one bill of costs is awarded to the nonparty-appellant.

The Supreme Court should have denied that branch of the motion of the defendants Joseph C. Placide and Marie L. Placide which was for leave to commence a third-party action against the nonparty-appellant as unnecessary (*see e.g. Health-Chem Corp. v Adler*, 201 AD2d 326; *Sepulveda v Congregation Noam Elimelech*, 2002 NY Slip Op 40161[U] [2002]).

SPOLZINO, J.P., ANGIOLILLO, LEVENTHAL and LOTT, 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