

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

D24426
H/kmg

_____AD3d_____

Argued - April 27, 2009

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2008-07672

DECISION & ORDER

Goldstar Acquisition Group, Inc., appellant,
v Alfred W. Topping, Jr., respondent.

(Index No. 8550/04)

Somer & Heller LLP, Commack, N.Y. (Michael C. Marcus and Samuel Butt of counsel), for appellant.

Farrell Fritz, P.C., Uniondale, N.Y. (James M. Wicks and Michael A.H. Schoenberg of counsel), for respondent.

In an action for specific performance of a contract for the sale of real property, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Whelan, J.), dated August 7, 2008, which, upon a decision of the same court dated April 28, 2008, granted that branch of the defendant's motion which was to cancel the notice of pendency on the subject real property and directed cancellation of the notice of pendency.

ORDERED that the order is affirmed, with costs.

On August 1, 2007, the parties entered into a stipulation of settlement on the record. The settlement provided, inter alia, that a closing on the sale of the subject property was to occur on or before December 3, 2007. Thereafter, the parties agreed to adjourn the closing date to January 9, 2008, with time being of the essence. However, the plaintiff failed to close on January 9, 2008.

September 29, 2009

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Thus, the defendant was entitled to cancellation of the notice of pendency (*see Cummings v DeLeon*, 142 AD2d 709).

SPOLZINO, J.P., COVELLO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court