

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

D25764  
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Argued - December 3, 2009

JOSEPH COVELLO, J.P.  
DANIEL D. ANGIOLILLO  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

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2009-00329  
2009-05018  
2009-05780

DECISION & ORDER

Charles E. Quick, appellant, v Edward Quick, Jr.,  
et al., respondents.  
(Action No. 1)

Edward Quick, Jr., respondents, et al., plaintiffs, v  
Charles Quick, appellant, et al., defendants.  
(Action No. 2)

(Index Nos. 8693/07, 521/08)

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James F. O'Brien, New York, N.Y., for appellant.

Jacobowitz and Gubits, LLP, Walden, N.Y. (Robert E. DiNardo and Kara J.  
Cavallo of counsel), for respondents.

In two related actions, inter alia, for a judgment declaring the parties' rights and obligations under a partnership agreement (Action No. 1), and to dissolve certain corporations affiliated with the partnership (Action No. 2), which were joined for trial, Charles E. Quick, the plaintiff in Action No. 1 and a defendant in Action No. 2, appeals (1), as limited by his brief, from so much of an order of the Supreme Court, Orange County (Giacomo, J.), dated December 23, 2008, as, sua sponte, appointed, pursuant to CPLR 6401, a temporary receiver for the subject partnership, (2) from a decision of the same court (Lubell, J.), dated April 13, 2009, and (3) from an order of the same court (Lubell, J.), dated May 12, 2009, which, upon the decision, granted, in part, the motion of Edward Quick, Jr., and John Quick, the defendants in Action No. 1 and plaintiffs in Action No. 2, to delineate the powers of the temporary receiver.

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ORDERED that on the Court's own motion, the notice of appeal from so much of the order dated December 23, 2008, as, sua sponte, appointed, pursuant to CPLR 6401, a temporary receiver for the subject partnership, is deemed an application for leave to appeal from that portion of the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the order dated December 23, 2008, is reversed insofar as appealed from, on the facts and in the exercise of discretion; and it is further,

ORDERED that the order dated May 12, 2009, is reversed, on the law, the motion of Edward Quick, Jr., and John Quick to delineate the powers of the temporary receiver is denied in its entirety as academic, and the decision is vacated; and it is further,

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

The Supreme Court improvidently exercised its discretion in, sua sponte, appointing, pursuant to CPLR 6401, a temporary receiver for the subject partnership. A temporary receiver may be appointed “[u]pon motion of a person having an apparent interest in property which is the subject of [the] action” (CPLR 6401[a]). Here, none of the parties moved for the appointment of a temporary receiver (*see Sycamore Realty Corp. v Matone*, 40 AD3d 843, 843-844). Moreover, “[t]he appointment of a temporary receiver is an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication on the merits” (*Vardaris Tech, Inc. v Paleros Inc.*, 49 AD3d 631, 632 [internal quotation marks omitted]; *see Schachner v Sikowitz*, 94 AD2d 709). Accordingly, a temporary receiver should only be appointed where there is a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interests in that property (*see Vardaris Tech, Inc. v Paleros Inc.*, 49 AD3d at 632; *Singh v Brunswick Hosp. Ctr.*, 2 AD3d 433, 434-435; *Matter of Armienti & Brooks*, 309 AD2d 659, 661; *Lee v 183 Port Richmond Ave. Realty*, 303 AD2d 379, 380; *Modern Collection Assoc. v Capital Group*, 140 AD2d 594; *Schachner v Sikowitz*, 94 AD2d at 709). Here, the record did not clearly establish the necessity to conserve the partnership's assets, or the need to protect any of the partners' interests in that property (*see Mandel v Grunfeld*, 111 AD2d 668).

In light of our determination, the order dated May 12, 2009, which granted the motion of Edward Quick, Jr., and John Quick to delineate the powers of the temporary receiver, must be reversed, the motion must be denied in its entirety as academic, and the decision must be vacated.

COVELLO, J.P., ANGIOLILLO, LOTT and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

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