

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

D25819
W/hu

_____AD3d_____

RUTH C. BALKIN, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-08724

DECISION & JUDGMENT

In the Matter of Janet Turansky, petitioner, v
Alan D. Scheinkman, etc., et al., respondents.

Jeffrey Levitt, Amityville, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Anthony J. Tomari of counsel), for respondents Alan D. Scheinkman and Orazio Bellantoni.

Curtis & Associates, P.C., New York, N.Y. (W. Robert Curtis, pro se, of counsel), respondent pro se and for respondent W. Robert Curtis.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent Alan D. Scheinkman, a Justice of the Supreme Court, Westchester County, to vacate an order entered in that court on August 7, 2009, in an action entitled *Callaghan v Curtis*, pending under Westchester County Index No. 20136/04, which, among other things, granted the motion of the defendants in that action for summary judgment on their counterclaims and to transfer venue of that action to a county within the City of New York or to the County of Nassau, and in the nature of prohibition to prohibit the respondent Alan D. Scheinkman from hearing any issues in that action and to prohibit the respondent Orazio Bellantoni, a Justice of the Supreme Court, Westchester County, from determining any motion pending in any matter to which the petitioner is a party.

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal*

Aid Society of Sullivan County v Scheinman, 53 NY2d 12, 16). In addition, “[b]ecause of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court--in cases where judicial authority is challenged--acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348). The petitioner has failed to demonstrate a clear legal right to the relief sought.

BALKIN, J.P., DICKERSON, 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