

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

D26694  
C/prt

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Submitted - February 24, 2010

MARK C. DILLON, J.P.  
HOWARD MILLER  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN, JJ.

2009-03087

DECISION & ORDER

Anthony Scardace, et al., plaintiffs, v Mid Island  
Hospital, Inc., et al., defendants, Cary Scott  
Goldinger, nonparty-appellant.

(Index No. 22223/92)

Cary Scott Goldinger, Garden City, N.Y., nonparty-appellant pro se.

In an action, inter alia, to recover damages for discrimination and hostile work environment pursuant to Executive Law § 296, the plaintiffs' outgoing counsel, Cary Scott Goldinger, appeals from an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated January 21, 2009, which, in effect, granted his unopposed application to fix his attorney's fee, for a recovery in quantum meruit, and for a charging lien against the plaintiffs only to the extent of awarding him a charging lien against the plaintiffs in the sum of \$37,150.

ORDERED that, on the Court's own motion, the notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed, with costs.

We find, under the peculiar circumstances of this case, that the Supreme Court's determination to grant the unopposed application of the nonparty-appellant only to the extent of awarding him a charging lien against the plaintiffs in the sum of \$37,150 was not an improvident exercise of discretion (*see DeCabrera v Cabrera-Rosete*, 70 NY2d 879, 881-882; *Matter of Philip*

March 30, 2010

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SCARDACE v MID ISLAND HOSPITAL, INC.

*Irwin Aaron, P.C. v Parisi TTEE Parisi Enters., Inc., Profit Sharing Trust, 240 AD2d 671).*

DILLON, J.P., MILLER, BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer  
Clerk of the Court