

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

D26834  
C/kmg

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REINALDO E. RIVERA, J.P.  
FRED T. SANTUCCI  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

2010-00655

DECISION & ORDER

In the Matter of Everette Weaver, petitioner, v  
David B. Vaughan, etc., respondent.

Everett Weaver, Hopewell Junction, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Monica A. Connell of  
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, a Justice of the Supreme Court, Kings County, to determine the petitioner's motion in an underlying action entitled *Better Homes Depot, Inc. v Whyte*, pending in the Supreme Court, Kings County, under Index No. 025309/05 to vacate an order staying evictions at certain premises in Brooklyn.

Upon the papers filed in support of the petition and the papers filed in opposition thereto, it is,

ORDERED that the petition is denied and the proceeding is dismissed, 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). This proceeding for a writ of mandamus to compel Justice Vaughan to determine the petitioner's motion in an underlying action on the ground that 60 days has elapsed after the motion was submitted for decision (*see* CPLR 2219)

April 6, 2010

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is premature, as the motion is not returnable until April 7, 2010 (*see Goldman v Seidell*, 234 AD2d 547).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, 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