

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

D27452  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 21, 2010

MARK C. DILLON, J.P.  
HOWARD MILLER  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

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2008-11334

DECISION & ORDER

In the Matter of Fred Giancola, et al., appellants,  
v Deborah Whitman, respondent-respondent,  
et al., respondents.

(Index No. 87321/06)

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Kossoff & Unger, New York, N.Y. (Joseph Goldsmith and Stacie Bryce Feldman of counsel), for appellants.

Collins, Dobkin & Miller, LLP, New York, N.Y. (Seth A. Miller of counsel), for respondent-respondent.

John C. Gray, South Brooklyn Legal Services, Brooklyn, N.Y. (Shantonu Basu, Edward Josephson, and Brent Meltzer of counsel), for Fifth Avenue Committee, amicus curiae.

In a holdover proceeding to recover possession of certain leased premises, the petitioners appeal, by permission, from an order of the Appellate Term of the Supreme Court for the Second, Eleventh, and Thirteenth Judicial Districts dated August 19, 2008, which affirmed an order of the Civil Court, Kings County (Milin, J.), dated April 3, 2007, granting the motion of Deborah Whitman to dismiss the petition.

ORDERED that the order dated August 19, 2008, is reversed, on the law, with costs, the order dated April 3, 2007, is reversed, the motion of Deborah Whitman to dismiss the petition is denied, and the matter is remitted to the Civil Court, Kings County, for further proceedings consistent herewith.

May 18, 2010

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MATTER OF GIANCOLA v WHITMAN

For reasons stated in our decision and order on the companion appeal (*see Matter of Giancola v Middleton*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]), the Appellate Term of the Supreme Court for the Second, Eleventh, and Thirteenth Judicial Districts erred in affirming the order of the Civil Court granting Deborah Whitman's motion to dismiss the petition in this holdover proceeding.

DILLON, J.P., MILLER, ENG and ROMAN, 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