

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

D28492
C/nl

_____AD3d_____

Argued - September 16, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-04102

DECISION & ORDER

Kathleen Swedish, respondent, v Harriet Beizer,
appellant.

(Index No. 17313/06)

Victor M. Serby, Woodmere, N.Y., for appellant.

Reynolds, Caronia, Gianelli, Hagny, Lapinta & Hargraves, LLP (Solomon & Siris,
P.C., Uniondale, N.Y. [Bill Tsevis], of counsel), for respondent.

In an action for the partition and sale of real property, the defendant appeals from an order of the Supreme Court, Suffolk County (Baisley, J.), dated March 19, 2009, which granted the plaintiff's motion to reform the deed to the subject property and to direct the County Clerk to accept the corrected deed for recording.

ORDERED that the order is affirmed, with costs.

The defendant contends that the Supreme Court erroneously granted the plaintiff's motion, inter alia, to reform a deed to the subject property because the parties had executed a stipulation which, among other things, withdrew the motion. However, there is no indication in the record that the purported stipulation was filed with the Supreme Court, and the order appealed from does not contain any determination regarding the stipulation. Therefore, the defendant's argument is not properly before this Court (*see Sullivan v Our Lady of Consolation Geriatric Care Ctr.*, 60 AD3d 663, 666; *Parra v D & F Paint Co., Inc.*, 38 AD3d 865, 866; *Parsons v Rubin*, 239 AD2d 653, 653-654; *Kiersh v Kiersh*, 222 AD2d 411). Moreover, the defendant relies on matter dehors

the record in making her argument (*see Broida v Bancroft*, 103 AD2d 88, 93). Accordingly, we affirm.

DILLON, J.P., FLORIO, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court