

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

D29014
W/prt

_____AD3d_____

Argued - October 13, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-02666

DECISION & ORDER

Wandalyn Williams, appellant, v John H. Eason,
et al., respondents, et al., defendant.

(Index No. 7488/03)

Glenn J. Wurzel, Hempstead, N.Y., for appellant.

Angelyn D. Johnson, Brooklyn, N.Y., for respondents.

In an action to recover damages based on a theory of promissory estoppel, the plaintiff appeals from an order of the Supreme Court, Nassau County (Warshawsky, J.), entered March 19, 2010, which granted the motion of the defendants John H. Eason and J.W.L.J. Realty Corporation to strike his jury demand.

ORDERED that the order is affirmed, with costs.

Since this action is primarily equitable in nature, and the damages demanded by the plaintiff are merely incidental to his claim for equitable relief, the plaintiff has no right to a jury trial (*see* CPLR 4101; *Ingenuit, Ltd. v Harriff*, 56 AD3d 428; *Clifford R. Gray, Inc. v LeChase Constr. Servs.*, 51 AD3d 1169; *Agrawal v Razgaitis*, 209 AD2d 566; *Magill v Dutchess Bank & Trust Co.*, 150 AD2d 531, 531-532; *Merex A.G. v Fairchild Weston Systems, Inc.*, 29 F3d 821, 823-826, *cert denied* 513 US 1084).

The plaintiff's remaining contention is without merit.

Accordingly, the Supreme Court properly granted the motion of the defendants John

H. Eason and J.W.L.J. Realty Corporation to strike the plaintiff's jury demand.

PRUDENTI, P.J., ANGIOLILLO, BELEN 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