

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

D29180  
Y/hu

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

Argued - November 9, 2010

ANITA R. FLORIO, J.P.  
ARIEL E. BELEN  
PLUMMER E. LOTT  
LEONARD B. AUSTIN, JJ.

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2009-02992

DECISION & ORDER

Amelia Manya Emily Ort, respondent, v Philip Ort,  
et al., defendants, Jeffrey Martin, appellant.

(Index No. 45230/07)

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Arnold J. Ludwig, Brooklyn, N.Y., for appellant.

Moskowitz, Book & Walsh, LLP, New York, N.Y. (Avraham C. Moskowitz and M.  
Todd Parker of counsel), for respondent.

In an action, inter alia, for injunctive relief, the defendant Jeffrey Martin appeals from an order of the Supreme Court, Kings County (Jacobson, J.), dated January 14, 2009, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Jeffrey Martin for summary judgment dismissing the complaint insofar as asserted against him is granted.

Contrary to the Supreme Court's determination, the appellant is entitled to summary judgment. The complaint in this action seeks to collaterally attack a certain judgment obtained by the appellant against the defendant Abraham J. Ort on the ground of intrinsic fraud, relief that can only be obtained in the action in which the judgment was entered (*see* 73 NY Jur 2d, Judgments § 273; *see also* CPLR 5015[a][3]; Third Preliminary Report of Advisory Committee on Practice and Procedure [1959 NY Leg Doc No. 17, at 204]; *Bank of New York v Stradford*, 55 AD3d 765). Accordingly, the Supreme Court should have granted the appellant's motion for summary judgment dismissing the complaint insofar as asserted against him for failure to state a cause of action, an affirmative defense that he asserted in his answer (*see Light v Light*, 64 AD3d 633, 634).

November 30, 2010

ORT v ORT

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In light of our determination, we need not address the parties' remaining contentions.

FLORIO, J.P., BELEN, LOTT and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court