

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

D29285
O/kmb

_____AD3d_____

Argued - November 16, 2010

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-07714

DECISION & ORDER

Nashat Abdel-Qader, et al., respondents,
v Maher Abdel-Qader, appellant.

(Index No. 26775/06)

Pollack, Pollack, Isaac & De Cicco, New York, N.Y. (Brian J. Isaac and Catherine A. Sheridan of counsel), for appellant.

Cooper, Paroff, Cooper & Cook, Kew Gardens, N.Y. (Ira G. Cooper of counsel), for respondents.

In an action, inter alia, to impose a constructive trust on certain real property, the defendant appeals from a judgment of the Supreme Court, Queens County (Geller, R.), entered July 16, 2009, which, after a nonjury trial, imposed a constructive trust upon the subject property and directed the defendant to deliver the deed to the property to the plaintiffs.

ORDERED that the judgment is affirmed, with costs.

Contrary to the defendant's contention, the plaintiffs presented evidence which established all of the elements necessary for the imposition of a constructive trust (*see Sharp v Kosmalski*, 40 NY2d 119, 121). Moreover, we reject the defendant's argument that the plaintiffs are precluded from obtaining the equitable relief in the nature of a constructive trust because they had unclean hands, as the purportedly immoral conduct ascribed to them is not alleged to have been directed at the defendant (*see Columbo v Columbo*, 50 AD3d 617, 619). Finally, we agree with the

plaintiffs that the doctrine of judicial estoppel is inapplicable here (*see Matter of One Beacon Ins. Co. v Espinoza*, 37 AD3d 607, 608).

FISHER, J.P., ANGIOLILLO, BELEN and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court