

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

D31276
C/kmb

_____AD3d_____

Argued - April 14, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-09374

DECISION & ORDER

Filippo Davi, appellant, v Maria Occhino, respondent.

(Index No. 17848/05)

Michael Stepper, New York, N.Y., for appellant.

Palmeri & Gaven, New York, N.Y. (Daniel F. Gaven of counsel), for respondent.

In an action, inter alia, to recover damages for trespass and private nuisance, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Schulman, J.), dated August 19, 2009, as granted the defendant's motion to confirm a referee's report (Geller, R.), dated March 5, 2009, made after a hearing, recommending that judgment be entered in favor of the defendant dismissing the complaint, and denied his cross motion to reject the report.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the defendant's motion to confirm the referee's report recommending that judgment be entered in her favor dismissing the complaint, and denied the plaintiff's cross motion to reject the report. The evidence presented at the hearing demonstrates that the subject express easement grants the defendant a right of way "for the ingress and egress of not more than two pleasure cars" to be housed in a garage on the plaintiff's property. The record supports a finding that this easement carries with it the right to "any reasonable parking of those vehicles used for ingress and egress . . . incidental to the primary purpose of the easement" (*Albright v Davey*, 68 AD3d 1490, 1493; see *Phillips v Iadarola*, 81 AD3d 1234).

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The plaintiff's remaining contentions are without merit.

DILLON, J.P., COVELLO, ENG and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court