

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

D32666
Y/prt

_____AD3d_____

Argued - October 6, 2011

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-09130

DECISION & ORDER

Sharona Kermanshachi, plaintiff, v
Norman Kermanshachi, et al, appellants,
et al., defendants.

(Index No. 11852/09)

Burke, Miele & Golden, LLP, Goshen, N.Y. (Patrick T. Burke and Jennifer S. Echevarria of counsel), for appellants.

In an action, inter alia, to quiet title pursuant to RPAPL 1501, the defendants Norman Kermanshachi, Shirin Kermanshachi, and Phillip Kermanshachi appeal, as limited by their brief, from so much of an order of the Supreme Court, Orange County (Alfieri, J.), dated July 27, 2010, as denied their unopposed motion pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs to the appellants, payable by the plaintiff, and the appellants' motion pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against them is granted.

The motion of the defendants Norman Kermanshachi, Shirin Kermanshachi, and Philip Kermanshachi (hereinafter collectively the appellants) to dismiss the complaint insofar as asserted against them on the ground of release pursuant to CPLR 3211(a)(5) should have been granted (*see Friends of Avalon Preparatory School v Ehrenfeld*, 6 AD3d 658). In support of their motion, the appellants submitted a document executed by the plaintiff in 2003 releasing them from all claims regarding the subject property. The words of the general release serve as a bar to all causes of action which might arise between the plaintiff and the appellants regarding the subject

October 25, 2011

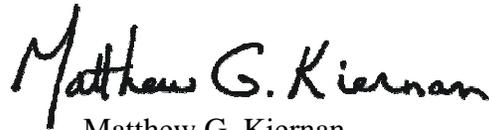
Page 1.

KERMANSHACHI v KERMANSHACHI

property (*see Used Boat Haven v Citibank*, 248 AD2d 610). The plaintiff submitted no opposition to the appellants' motion. Since the release is clear and unambiguous on its face, it should be enforced as a private agreement between parties according to its terms (*see N.J. Boys, Inc. v Eklecco*, 2 AD3d 511). Accordingly, the Supreme Court should have granted the appellants' motion to dismiss the complaint insofar as asserted against them.

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, 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