

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

D33323
C/kmb

_____AD3d_____

Submitted - November 22, 2011

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-01876

DECISION & ORDER

Donna E. Miller, respondent, v Louise A. Miller,
appellant.

(Index No. 11473/10)

Louis J. Galgano III, White Plains, N.Y., for appellant.

Nemchek & Poeschl, LLC, Garden City, N.Y. (Gregory J. Gallo of counsel), for
respondent.

In an action, inter alia, for injunctive relief, the defendant appeals, as limited by her
brief, from so much of an order of the Supreme Court, Westchester County (Loehr, J.), entered
January 19, 2011, as denied that branch of her motion which was to dismiss the complaint pursuant
to CPLR 8502.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the circumstances of this case, the Supreme Court providently exercised its
discretion in determining that the plaintiff, who does not reside in New York State, complied with
CPLR 8501(a) and an order of the Supreme Court, Westchester County, entered July 23, 2010, which
directed her to post security for costs (*see* CPLR 8501[a]; 8502). Accordingly, that branch of the
defendant's motion which was to dismiss the complaint pursuant to CPLR 8502 was properly denied
(*see* CPLR 8502; *see generally Brodie v Adolphus*, 228 AD2d 919).

MASTRO, A.P.J., HALL, SGROI and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

December 20, 2011

MILLER v MILLER