

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

D34242
C/kmb

_____AD3d_____

Argued - February 14, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-06033

DECISION & ORDER

John P. Rautenstrauch, appellant-respondent,
v Aruna Bakhru, respondent-appellant.

(Index No. 1367/11)

Teahan & Constantino, Poughkeepsie, N.Y. (Richard I. Cantor of counsel), for appellant-respondent.

Montalbano, Condon & Frank, P.C., New City, N.Y. (Brian J. Quinn and Michael J. Weiner of counsel), for respondent-appellant.

In an action, inter alia, pursuant to RPAPL article 15 to compel the determination of claims to real property and for injunctive relief, the plaintiff appeals from so much of an order of the Supreme Court, Dutchess County (Brands, J.), dated June 8, 2011, as denied his motion for summary judgment on the complaint, and the defendant cross-appeals from so much of the same order as denied her cross motion for summary judgment dismissing the complaint and on her counterclaims.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

The plaintiff commenced this action against the defendant, inter alia, to determine the correct boundary between their adjacent properties and to enjoin the defendant's alleged trespass onto the plaintiff's property. The defendant counterclaimed for similar relief. The plaintiff moved, and the defendant cross-moved, for summary judgment. In support of the motion and cross motion, the parties submitted, among other things, the affidavits of licensed surveyors. Given the conflicting evidence, the Supreme Court properly denied the motion and cross motion, as there remain triable issues of fact as to the location of the subject boundary and whether the doctrine of practical location

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applies in this case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Hartman v Goldman*, 84 AD3d 734, 736).

RIVERA, J.P., CHAMBERS, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court