

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

D35780  
T/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 25, 2012

WILLIAM F. MASTRO, A.P.J.  
DANIEL D. ANGIOLILLO  
LEONARD B. AUSTIN  
SANDRA L. SGROI, JJ.

---

2010-10533

DECISION & ORDER

Margaret Yu, appellant, v Dino Gentile, also known  
as Dean Gentile, et al., respondents.

(Index No. 7966/07)

---

McCullough, Goldberger & Staudt, LLP, White Plains, N.Y. (Ruth F-L. Post of  
counsel), for appellant.

Annette G. Hasapidis, South Salem, N.Y., for respondents.

In an action, inter alia, for injunctive relief, the plaintiff appeals from an order of the  
Supreme Court, Westchester County (Lefkowitz, J.), dated September 29, 2010, which denied her  
motion to direct the defendants to comply with a prior order of the same court dated September 17,  
2009, by moving an exterior stairway located on their property, and to direct the defendants to  
remove certain fixtures and plants that allegedly encroached on the plaintiff's property.

ORDERED that the order dated September 29, 2010, is affirmed, with costs.

The Supreme Court correctly denied that branch of the plaintiff's motion which was  
to direct the defendants to comply with its prior order dated September 17, 2009, by moving an  
exterior stairway located on their property, as the prior order did not affirmatively direct the  
defendants to move the stairway, but rather stated only that the plaintiff was entitled to certain  
declaratory relief. Further, we note that during the pendency of the instant appeal, in a separate  
appeal taken from a judgment in a related CPLR article 78 proceeding, this Court annulled so much  
of a determination of the Village of Tuckahoe Zoning Board of Appeals as, upon granting the  
defendants' application for an area variance, imposed a condition that the defendants move the  
subject stairway (*see Matter of Gentile v Vil. of Tuckahoe Zoning Bd. of Appeals*, 87 AD3d 695,  
696).

The plaintiff also failed to demonstrate her entitlement to an order directing the defendants to remove the fixtures and plants that allegedly encroached on her property (*see* RPAPL 871; *Broser v Schubach*, 85 AD3d 957; *Town of Fishkill v Turner*, 60 AD3d 932, 933; *see also Marsh v Hogan*, 81 AD3d 1241, 1242).

The plaintiff's remaining contentions are without merit.

MASTRO, A.P.J., ANGIOLILLO, AUSTIN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court