

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

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WILLIAM F. MASTRO, J.P.
JEFFREY A. COHEN
COLLEEN D. DUFFY
VALERIE BRATHWAITE NELSON, JJ.

2017-06475

DECISION, ORDER & JUDGMENT

In the Matter of Angelo Todd Merolla, petitioner, v
Jerry Garguilo, etc., et al., respondents; Michael J.
Meyer, individually, and on behalf of 148 South
Emerson Associates, LLC, intervenor-respondent.

Arkin Solbakken LLP, New York, NY (Robert C. Angiolillo of counsel) for
petitioner.

Eric T. Schneiderman, Attorney General, New York, NY (Angel M. Guardiola II of
counsel), for respondent Jerry Garguilo.

Arnold & Porter Kaye Scholer LLP, New York, NY (James M. Catterson, Stephanna
F. Sotkowski, Margaret A. Rogers, Sherry J. Jarons, and Greenberg Traurig LLP
[Michael Burrows], of counsel), for intervenor-respondent.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to
compel the respondent Jerry Garguilo, a Justice of the Supreme Court, Suffolk County, to vacate,
insofar as it relates to the petitioner, an order of the Supreme Court, Suffolk County, dated
November 16, 2016, in an action entitled *Meyer v Meagher*, pending under Index No. 068379/14,
and to vacate a corrected order in that action dated June 15, 2017, and in the nature of prohibition
to prohibit enforcement of the corrected order. Motion by the intervenor-respondent, inter alia, to
dismiss the proceeding. By decision and order on motion of this Court dated November 6, 2017, that
branch of the motion of the intervenor-respondent which is to dismiss the proceeding was held in
abeyance and referred to the panel of Justices hearing the proceeding for determination upon the
argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition

April 4, 2018

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thereto, and upon the submission of the proceeding, it is

ORDERED that the branch of the motion by the intervenor-respondent which is to dismiss the proceeding is granted to the extent that so much of the proceeding as relates to the order dated November 16, 2016, is dismissed as untimely (*see* CPLR 217[1]), without costs or disbursements, and that branch of the motion is otherwise denied; and it is further,


ADJUDGED that the petition is otherwise denied and the proceeding is otherwise dismissed on the merits, without costs or disbursements.

“Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court—in cases where judicial authority is challenged—acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought (*see Matter of Legal Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16).

The petitioner failed to demonstrate a clear legal right to the relief sought.

MASTRO, J.P., COHEN, DUFFY and BRATHWAITE NELSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court