

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

D56713
T/htr

_____AD3d_____

Argued - March 19, 2018

REINALDO E. RIVERA, J.P.
SHERI S. ROMAN
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2017-01572

DECISION & ORDER

Elena McMahan, appellant, v Susie McMahan Perry,
also known as Leslie Susan Perry, as personal
representative of the estate of David Bruce McMahan,
respondent.

(Index No. 66190/16)

Law Office of Yonatan S. Levoritz, P.C., Brooklyn, NY, for appellant.

Belowich & Walsh LLP, White Plains, NY (Brian T. Belowich and Kerry Ford
Cunningham of counsel), for respondent.

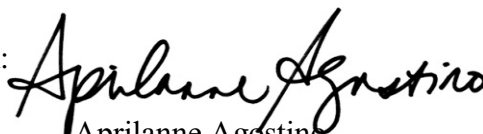
In an action for a declaratory judgment, the plaintiff appeals from an order of the Supreme Court, Westchester County (Terry Jane Ruderman, J.), dated February 6, 2017. The order, insofar as appealed from, granted the defendant's motion pursuant to CPLR 3211(a) to dismiss the complaint.

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

Under the circumstances of this case, the Supreme Court properly granted the defendant's motion pursuant to CPLR 3211(a) to dismiss the complaint (*see generally Matter of Morgenthau v Erlbaum*, 59 NY2d 143, 148).

RIVERA, J.P., ROMAN, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

September 26, 2018

McMAHAN v PERRY, as personal representative of the estate of McMAHAN