

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

D23148  
T/kmg

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Submitted - March 26, 2009

ROBERT A. SPOLZINO, J.P.  
MARK C. DILLON  
ANITA R. FLORIO  
ARIEL E. BELEN, JJ.

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2008-02677

DECISION & ORDER

Mary E. Howe, appellant-respondent,  
v Costley A. Jeremiah, respondent-appellant.

(Index No. 37312/04)

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Jack Gross, Bronx, N.Y., for appellant-respondent.

Borchert, Genovesi, LaSpina & Landicino, P.C., Whitestone, N.Y. (Gregory M. LaSpina and Stephen J. Smith of counsel), for respondent-appellant.

In an action, inter alia, pursuant to RPAPL article 15 to determine the rights of the parties to certain real property, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Schack, J.), dated August 10, 2007, as granted the defendant's motion for summary judgment on his counterclaims and directed him to file a note of issue for an inquest, and the defendant cross appeals from stated portions of the same order.

ORDERED that the cross appeal is dismissed, without costs or disbursements, as the defendant is not aggrieved by the portion of the order cross-appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, without costs or disbursements, and the defendant's motion for summary judgment on his counterclaims is deemed withdrawn.

The Supreme Court erroneously granted the defendant's motion for summary judgment on his counterclaims, as he specifically withdrew his motion for summary judgment prior

May 12, 2009

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to the court's determination thereof. Therefore, the order must be reversed insofar as appealed from.

The defendant's cross appeal, which relates to his motion to strike the plaintiff's reply to his counterclaims, must be dismissed, as that motion remains pending and undecided (*see Andreas v Catskill Mountain Lodging LLC*, 60 AD3d 604; *Katz v Katz*, 68 AD2d 536, 542-543).

SPOLZINO, J.P., DILLON, FLORIO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court