

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

D24272  
T/kmg

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

Submitted - June 9, 2009

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
JOSEPH COVELLO  
LEONARD B. AUSTIN, JJ.

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2008-01844

DECISION & ORDER

Richard T. Vitarelle, Sr., appellant, v Richard T.  
Vitarelle, Jr., etc., respondent.

(Index No. 13361-04)

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Greshin, Ziegler & Amicizia, LLP, Smithtown, N.Y. (Matthew H. Bligh of counsel),  
for appellant.

Siben & Siben, LLP, Bay Shore, N.Y. (Michael P. DeNoto of counsel), for  
respondent.

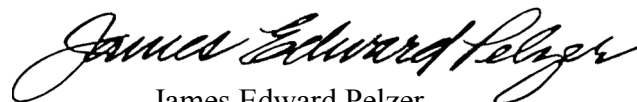
In an action to impose a constructive trust upon certain real property, the plaintiff,  
Richard T. Vitarelle, Sr., appeals, as limited by his brief, from so much of a judgment of the Supreme  
Court, Suffolk County (Blydenburgh, J.), dated December 5, 2006, as, on consent, awarded  
possession of the subject premises to the defendant.

ORDERED that the appeal is dismissed, with costs.

The plaintiff consented to the portion of the judgment appealed from which awarded  
possession of the subject premises to the defendant. Accordingly, the appeal must be dismissed, as  
no appeal lies from a judgment entered upon the consent of the appealing party (*see* CPLR 5511;  
*Matter of Shteierman v Shteierman*, 29 AD3d 810; *Ryan Mgt. Corp. v Cataffo*, 278 AD2d 217, 218).

PRUDENTI, P.J., MILLER, COVELLO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

September 8, 2009

VITARELLE v VITARELLE