

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 16-00505

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, CURRAN, AND SCUDDER, JJ.

GARY SKALYO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

LAUREL PARK CONDOMINIUM BOARD OF MANAGERS,
CLOVER MANAGEMENT, INC., AND MARRANO MARK
EQUITY, DEFENDANTS-RESPONDENTS.
(APPEAL NO. 2.)

DONALD A. ALESSI, EAST AMHERST (RICHARD G. COLLINS OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

COLUCCI & GALLAHER, P.C., BUFFALO (RYAN L. GELLMAN OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Erie County
(Frederick J. Marshall, J.), entered December 21, 2015. The judgment
awarded money damages to defendants for fines and penalties incurred.

It is hereby ORDERED that the judgment so appealed from is
unanimously modified on the law by granting judgment in favor of
defendants as follows:

It is ADJUDGED AND DECLARED that plaintiff violated
section 10.09 (7) of the Declaration of Laurel Park
Condominium and section 7.04 (g) of the Bylaws of Laurel
Park Condominium,

and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff commenced this declaratory judgment action
seeking a declaration that the installation of a dog restraint system
known as an "invisible fence" did not violate the provisions of the
Declaration and Bylaws of Laurel Park Condominium prohibiting the
alteration, addition or modification of the lot on which plaintiff's
unit is located without the prior written consent of defendant Laurel
Park Condominium Board of Managers. We conclude that Supreme Court
properly granted defendants' motion seeking summary judgment for
reasons stated in its decision. The court erred, however, in failing
to declare the rights of the parties, and we therefore modify the
judgment by making the requisite declaration (*see Maurizio v*

Lumbermens Mut. Cas. Co., 73 NY2d 951, 954).

Entered: February 3, 2017

Frances E. Cafarell
Clerk of the Court