

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

D12572
A/mv

_____AD3d_____

Argued - October 6, 2006

FRED T. SANTUCCI, J.P.
GABRIEL M. KRAUSMAN
WILLIAM F. MASTRO
STEVEN W. FISHER, JJ.

2004-10086

DECISION & ORDER

Edward L. Wolf, et al., appellants,
v Citibank, N.A., etc., respondent.

(Index No. 15379/02)

Siben & Ferber, Hauppauge, N.Y. (Steven Ferber and Leonard G. Kapsalis of counsel), for appellants.

Certilman Balin Adler & Hyman, LLP, East Meadow, N.Y. (Thomas J. McNamara of counsel), for respondent.

In an action for a judgment declaring the rights and obligations of the parties with respect to certain line of credit agreements, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated September 28, 2004, as granted those branches of the defendant's motion which were for summary judgment dismissing the complaint and for summary judgment on the issue of liability on its counterclaim to recover amounts due under certain promissory notes.

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

The defendant established its prima facie entitlement to judgment as a matter of law by submitting proof of promissory notes and the affidavit of its vice president establishing that the plaintiffs failed to make payments in accordance with the terms of the notes (*see JPMorgan Chase Bank v Gamut-Mitchell*, 27 AD3d 622; *Charter One Bank v Houston*, 300 AD2d 429; *McCann v Cronin*, 276 AD2d 472; *Beube v English*, 206 AD2d 339). In opposition, the plaintiffs'

November 14, 2006

Page 1.

WOLF v CITIBANK, N.A.

unsubstantiated and conclusory assertions were insufficient to raise a triable issue of fact (*see Simoni v Time-Line, Ltd.*, 272 AD2d 537; *Money Store v Kuprianchik*, 240 AD2d 398; *Naugatuck Sav. Bank v Gross*, 214 AD2d 549).

The plaintiffs' remaining contention is without merit.

SANTUCCI, J.P., KRAUSMAN, MASTRO and FISHER, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court