

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

D14102  
X/gts

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

Argued - January 30, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
ROBERT A. LIFSON, JJ.

---

2006-04269

DECISION & ORDER

Markella Contracting Corp., et al., appellants,  
v J&K Painting Corp., et al., respondents.

(Index No. 18254/05)

---

Demetriou & Demetriou, P.C., Garden City, N.Y. (Michael Demetriou of counsel),  
for appellants.

George E. Magriples, Astoria, N.Y., for respondent J&K Painting Corp.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, New York, N.Y. (Adam R.  
Schwartz and Scott A. Levin of counsel), for respondent Gulf Insurance Company.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal from an order of the Supreme Court, Queens County (Agate, J.), dated April 19, 2006, which granted the motion of the defendant J&K Painting Corp., in effect, joined by the defendant Gulf Insurance Company, inter alia, for summary judgment dismissing the complaint insofar as asserted against the defendant Gulf Insurance Company.

ORDERED that the order is affirmed, with one bill of costs.

The defendants made a prima facie showing that defendant Gulf Insurance Company (hereinafter Gulf) was entitled to summary judgment dismissing the complaint insofar as asserted against it (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). In opposition thereto, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the motion which was for summary judgment dismissing the complaint insofar as asserted against Gulf.

February 27, 2007

Page 1.

MARKELLA CONTRACTING CORP. v J&K PAINTING CORP.

The plaintiffs' remaining contentions are improperly raised for the first time on appeal or are without merit.

MILLER, J.P., SPOLZINO, RITTER and LIFSON, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court