

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

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_____AD3d_____

Argued - February 6, 2007

HOWARD MILLER, J.P.
ROBERT W. SCHMIDT
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2005-09244

DECISION & ORDER

Allen Jordan, et al., appellants, v William
Viletto, et al., respondents.

(Index No. 674/05)

Daniels and Porco, LLP, Carmel, N.Y. (Robert C. Lusardi of counsel), for appellants.

Curtiss, Leibell & Shilling, P.C., Carmel, N.Y. (Anthony R. Mole of counsel), for
respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal,
as limited by their brief, from so much of an order of the Supreme Court, Putnam County (O'Rourke,
J.), dated September 15, 2005, as granted the defendants' cross motion for reformation of the parties'
contract.

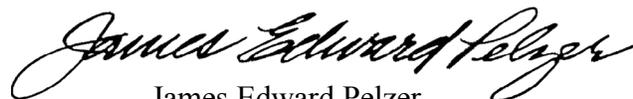
ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and the cross motion for reformation of the parties' contract is denied.

The defendants failed to plead reformation either as an affirmative defense or as a
counterclaim. Thus, it was waived (*see* CPLR 3018[b]; *Apex Two v Terwilliger*, 211 AD2d 856,
857-858). Accordingly, the Supreme Court erred in granting the defendants' cross motion for
reformation of the parties' contract.

The defendants' remaining contentions are without merit

MILLER, J.P., SCHMIDT, RITTER and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 20, 2007

JORDAN v VILLETTO