

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

D14406
O/cb

_____AD3d_____

Argued - February 13, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
GLORIA GOLDSTEIN
WILLIAM E. McCARTHY, JJ.

2006-02736

DECISION & ORDER

Municipal Testing Laboratory, Inc., appellant, v
Aleksandr Brom, et al., respondents.

(Index No. 6600/05)

Stim & Warmuth, P.C., Farmingville, N.Y. (Paula J. Warmuth of counsel), for
appellant.

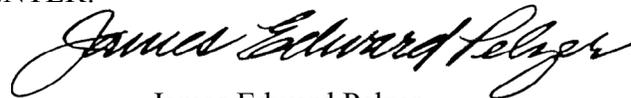
In an action, inter alia, to recover damages for fraud and conversion, the plaintiff
appeals from an order of the Supreme Court, Nassau County (Feinman, J.), dated February 7, 2006,
which denied its motion, in effect, for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, the motion is granted,
and the matter is remitted to the Supreme Court, Nassau County, for a trial on the issue of damages.

In opposition to the plaintiff's prima facie demonstration of entitlement to judgment
as a matter of law (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562), the defendants
submitted only an unsworn statement. An unsworn statement is not competent evidence capable of
raising a triable issue of fact (*see Mazzola v City of New York*, 32 AD3d 906; *Orelli v Showbiz Pizza*
Time, 302 AD2d 440, 441; *Ritts v Teslenko*, 276 AD2d 768, 769). Therefore, the Supreme Court
erred in denying the plaintiff's motion, in effect, for summary judgment on the issue of liability.

MILLER, J.P., SPOLZINO, GOLDSTEIN and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

March 27, 2007

MUNICIPAL TESTING LABORATORY, INC. v BROM