

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

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_____AD3d_____

Argued - February 20, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2006-00989

DECISION & ORDER

John VanLeeuwen, et al., appellants, et al.,
plaintiff, v Henry P. VanLeeuwen, respondent,
et al., defendant.

(Index No. 2885/00)

McCarthy Fingar LLP, White Plains, N.Y. (Robert H. Rosh of counsel), for
appellants.

Benjamin Ostrer & Associates, P.C., Chester, N.Y. (Cynthia Dolan of counsel), for
respondent.

In an action, inter alia, to recover damages for breach of fiduciary duty and unjust enrichment, the plaintiffs John VanLeeuwen and Louis VanLeeuwen, Sr., appeal from a judgment of the Supreme Court, Dutchess County (Brands, J.), which, after a nonjury trial, is in favor of the defendant Henry P. VanLeeuwen and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

On the record presented, the Supreme Court's determination that the appellants failed to meet their burden of proof that the defendant Henry P. VanLeeuwen breached a fiduciary duty or was unjustly enriched was warranted, and we decline to disturb it (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492).

March 27, 2007

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The appellants' remaining contentions are without merit.

MILLER, J.P., RITTER, DILLON and ANGIOLILLO, 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