

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

D14711
X/gts

_____AD3d_____

Argued - March 15, 2007

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2006-02372

DECISION & ORDER

Wells Fargo Funding, Inc., appellant, v
Lend-Mor Mortgage Bankers Corp., respondent.

(Index No. 9909/03)

Francis J. DeVito, P.A., New York, N.Y. (Michael Natiello of counsel), for appellant.

Certilman Balin Adler & Hyman, LLP, East Meadow, N.Y. (John H. Gionis, Candace Reid Gladston, and Donna-Marie Korth of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Lally, J.), entered February 21, 2006, which, upon a decision of the same court dated January 13, 2006, made after a nonjury trial, is in favor of the defendant and against it dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

In reviewing a determination made after a nonjury trial, the power of this court is as broad as that of the trial court; the Appellate Division may render the judgment it finds warranted by the facts (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Sandy v Giusto*, 37 AD3d 584; *Healy v Williams*, 30 AD3d 466). The plaintiff failed to establish that the parties entered into a contract upon which the plaintiff's claims for relief were predicated. Accordingly, the complaint was properly dismissed.

In light of our determination, we need not address the defendant's remaining contentions.

RIVERA, J.P., SKELOS, ANGIOLILLO and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court