

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

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_____AD3d_____

Argued - March 20, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2005-08778

DECISION & ORDER

A. Fajer Imp. E Exp. Ltda, d/b/a Dialom Brasil,
respondent, v Schick Technologies, Inc., appellant.

(Index No. 29507/02)

Morgan Melhuish Monaghan Arvidson Abrutyn & Lisowski, New York, N.Y. (Erin A. O’Leary of counsel) and Heller, Horowitz & Feit, P.C., New York, N.Y. (Joseph S. Schick of counsel), for appellant (one brief filed).

Tranfo & Tranfo, LLC, Jericho, N.Y. (Joseph A. Tranfo of counsel), for respondent.

In an action to recover damages for breach of contract and libel, the defendant appeals from an order of the Supreme Court, Queens County (Dollard, J.), entered July 25, 2005, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the defendant’s motion for summary judgment dismissing the complaint. The defendant failed to establish its prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Accordingly, it is unnecessary to consider the sufficiency of the plaintiff’s opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

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A. FAJER IMP. E EXP. LTDA, d/b/a DIALOM BRASIL v SCHICK TECHNOLOGIES, INC.

The defendant's remaining contentions are without merit.

MILLER, J.P., RITTER, COVELLO and McCARTHY, 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