

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

D15189
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_____AD3d_____

Argued - April 17, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-07096

DECISION & ORDER

Marcus & Company, LLP, appellant, v John
Pescitelli, et al., respondents.

(Index No. 10698/05)

Kenneth J. Weinstein, Garden City, N.Y. (Michael J. Langer of counsel), for
appellant.

Kestenbaum & Mark, Great Neck, N.Y. (Paula Schwartz Frome of counsel), for
respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals,
as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Bucaria, J.),
dated June 28, 2006, as denied its motion for summary judgment on the issue of liability on its first,
second, and third causes of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the plaintiff's motion which was
for summary judgment on the issue of liability on its first cause of action alleging breach of contract
(*see generally JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384; *Alvarez v Prospect
Hosp.*, 68 NY2d 320, 324) since, after the plaintiff established, prima facie, its entitlement to
judgment as a matter of law, the defendants raised triable issues of fact in opposition to the motion
(*id.*; *see Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067).

May 22, 2007

MARCUS & COMPANY, LLP v PESCITELLI

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The plaintiff's remaining contentions are without merit.

MILLER, J.P., RITTER, COVELLO and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court