

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

D15267
C/hu

_____AD3d_____

Argued - April 16, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-04170

DECISION & ORDER

Estate of Lawrence Blatt, etc., respondent,
v North Fork Bank, appellant.

(Index No. 753/05)

Wickham, Bressler, Gordon & Geasa, P.C., Mattituck, N.Y. (Eric J. Bressler of counsel), for appellant.

La Reddola, Lester & Associates, LLP, Garden City, N.Y. (Steven M. Lester and Jean M. Smyth of counsel), for respondent.

In an action, inter alia, to recover in quantum meruit, the defendant appeals from an order of the Supreme Court, Nassau County (Martin, J.), entered March 20, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant failed to establish its prima facie entitlement to judgment as a matter of law on the issue of whether its Business Concierge Group/Incentive Program Guidelines constituted a contract which precluded the plaintiff's causes of action (*see Lobosco v New York Tel. Co./NYNEX*, 96 NY2d 312, 317; *Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557). In any event, the provision of those Guidelines relied upon by the defendant was susceptible to more than one reasonable interpretation. Therefore, the court properly denied the

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defendant's motion for summary judgment dismissing the complaint (*see Lerer v City of New York*, 301 AD2d 577, 578; *Reiner v Wenig*, 269 AD2d 379).

SCHMIDT, J.P., GOLDSTEIN, ANGIOLILLO and McCARTHY, 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