

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

D15334
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_____AD3d_____

Argued - April 24, 2007

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2006-04408

DECISION & ORDER

Lawlor Consultants, Ltd., respondent, v Shoreham-
Wading River Central School District, appellant.

(Index No. 16191/05)

Littler Mendelson, P.C., New York, N.Y. (David M. Wirtz, Bruce R. Millman, and
Lisa M. Brauner of counsel), for appellant.

Bracken & Margolin, LLP, Islandia, N.Y. (Linda U. Margolin of counsel), for
respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant
appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County
(Weber, J.), entered March 22, 2006, as denied its motion to dismiss the complaint pursuant to CPLR
3211(a)(7).

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

“On the question of whether the complaint states a cause of action sufficient to
withstand a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed,
the facts alleged in the complaint accepted as true, and the plaintiff accorded the benefit of every
favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87)” (*Fay Estates v Toys “R” Us, Inc.*, 22
AD3d 712,714). Under the circumstances of this case, the Supreme Court properly declined to
dismiss the complaint (*see Fay Estates v Toys “R” Us, Inc., supra*; CPLR 3211[a][7]; *Incorporated
Vil. of Rockville Ctr. v Spiegel, Peter & Liu, Architects, P.C.*, 295 AD2d 479; *Vrooman v Village*

May 29, 2007

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LAWLOR CONSULTANTS, LTD. v SHOREHAM-WADING RIVER
CENTRAL SCHOOL DISTRICT

of Middleville, 91 AD2d 833; *see generally Polonetsky v Better Homes Depot*, 97 NY2d 46, 54; *cf. Lawrence L. Smith Assocs. v Bd. of Educ. of Massapequa Union Free School Dist.*, 285 AD2d 583).

The defendant's remaining contentions are without merit.

SPOLZINO, J.P., FLORIO, SKELOS 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