

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

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_____AD3d_____

Argued - March 15, 2007

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2006-04336

DECISION & ORDER

John Tarantola, appellant, v La Squisita Foods,
Inc., respondent.

(Index No. 19838/04)

Messina & Associates, P.C., White Plains, N.Y. (Anthony John Messina of counsel),
for appellant.

Lyder & Scalise, LLP, Scarsdale, N.Y. (James K. Lyder of counsel), for respondent.

In an action, inter alia, to recover damages for breach of an employment contract, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Zambelli, J.), entered May 3, 2007, which, after a nonjury trial, and upon a decision of the same court dated June 12, 2006, is in favor of the defendant and against him dismissing the complaint.

ORDERED that on the court's own motion, the notice of appeal from the decision is deemed a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contention, based on the evidence at the trial, the trial court's determination that the defendant did not breach the subject contract was "warranted by the facts" (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *see*

May 29, 2007

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Astoria Fed. Sav. & Loan Assn v Thrift Assns Serv. Corp., 237 AD2d 475). Accordingly, the complaint was correctly dismissed.

RIVERA, J.P., SKELOS, ANGIOLILLO and BALKIN, 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