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

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_____AD3d_____ Submitted - May 21, 2007

REINALDO E. RIVERA, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-08848 DECISION & ORDER

Brian Cauthers, et al., respondents, v Brite Ideas, LLC, appellant, et al., defendant.

(Index No. 1851/05)

Johnson & Foley, P.C., Montgomery, N.Y. (Kevin Foley of counsel), for appellant.

Jay B. Renfro, Ghent, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendant Brite Ideas, LLC, appeals, as limited by its brief, from so much of an order of the Supreme Court, Dutchess County (Sproat, J.), dated August 8, 2006, as denied those branches of its cross motion which were, in effect, for summary judgment dismissing the second, third, and fourth causes of action insofar as asserted against it.

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

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.,* 64 NY2d 851, 853). The Supreme Court properly found that the appellant's proof, consisting solely of an attorney's affidavit, was

insufficient to meet its initial burden (*see Jeune v O.T. Trans Mix Corp.,* 29 AD3d 635, 636; *Stahl v Stralberg,* 287 AD2d 613, 614).

RIVERA, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court