

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

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_____AD3d_____

Argued - May 29, 2007

HOWARD MILLER, J.P.
STEPHEN G. CRANE
DAVID S. RITTER
ROBERT A. LIFSON, JJ.

2006-04319

DECISION & ORDER

Dale Meyerhoeffer, et al., appellants, v Haviland
Realty Corp., et al., respondents.

(Index No. 7130/03)

Robbins & Associates, P.C., New York, N.Y. (James A. Robbins of counsel), for appellants.

Burke, Scolamiero, Mortati & Hurd, LLP, Albany, N.Y. (Peter M. Scolamiero and Gerald D. D'Amelia, Jr., of counsel), for respondents.

In an action, inter alia, to recover damages for fraud, the plaintiffs appeal from an order of the Supreme Court, Westchester County (Nicolai, J.), entered February 16, 2006, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

In opposition to the defendants' prima facie demonstration of entitlement to judgment as a matter of law dismissing the complaint, the plaintiffs failed to raise a triable issue of fact as to whether the defendants owed them a fiduciary duty which they breached, engaged in fraud, or made a negligent representation (*see J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144; *Heaven v McGowan*, 40 AD3d 583). Thus, the defendants' motion for summary judgment dismissing the complaint was properly granted.

MILLER, J.P., CRANE, RITTER and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 11, 2007

MEYERHOEFFER v HAVILAND REALTY CORP.