

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

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_____AD3d_____

Submitted - October 16, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-01038

DECISION & ORDER

Eric Rosenfeld, et al., appellants, v Oxford
Construction Associates, LLC, defendant,
Eugene Boshes, et al., respondents.

(Index No. 18339/06)

Rabin Panero & Herrick, White Plains, N.Y. (Matthew D. Schwarz of counsel), for
appellants.

Welby, Brady & Greenblatt, LLP, White Plains, N.Y. (Geoffrey S. Pope of counsel),
for respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Nastasi, J.), entered January 3, 2007, as granted that branch of the motion of the defendants Eugene Boshes and Alfred Wilhelm pursuant to CPLR 3211(a)(7) which was to dismiss insofar as asserted against them the second cause of action seeking damages for fraud in the inducement.

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

The plaintiffs commenced this action, inter alia, to recover damages allegedly arising from the breach of a contract to renovate their home. In the second cause of action, the plaintiffs sought to recover damages for fraud in the inducement, alleging that the defendants never intended to meet the completion date for the work stated in the contract. The Supreme Court granted that

November 13, 2007

Page 1.

ROSENFELD v OXFORD CONSTRUCTION ASSOCIATES, LLC

branch of the motion of the defendants Eugene Boshes and Alfred Wilhelm pursuant to CPLR 3211(a)(7) which was to dismiss insofar as asserted against them the second cause of action seeking damages for fraud in the inducement. We affirm.

Taking the allegations of the complaint as true, and according the plaintiffs the benefit of every favorable inference, the allegations, even as amplified by the affidavit of the plaintiff Eric Rosenfeld, fail to state a cause of action as against the defendants Eugene Boshes and Alfred Wilhelm to recover damages for fraud in the inducement (*see Mendelovitz v Cohen*, 37 AD3d 670).

In light of this determination, we need not reach the parties' remaining contentions.

MILLER, J.P., RITTER, SANTUCCI 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