

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

D17173
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Argued - November 19, 2007

GABRIEL M. KRAUSMAN, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2006-09857

DECISION & ORDER

Deer Park Enterprises, LLC, respondent,
v AIL Systems, Inc., n/k/a EDO Corporation,
appellant.

(Index No. 10910/05)

Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP, Riverhead, N.Y. (Stephen B. Latham, Patrick B. Fife, and Philip D. Nykamp of counsel), for appellant.

Farrell Fritz, P.C., Uniondale, N.Y. (James M. Wicks, Aaron E. Zerykier, and Gabrielle R. Schaich of counsel), for respondent.

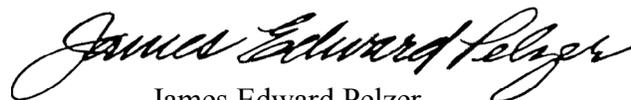
In an action, inter alia, to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Nassau County (Warshawsky, J.), dated September 15, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint on the ground that the defendant failed to meet its initial burden by establishing, prima facie, its entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). In fact, the evidence submitted by the defendant in support of its motion, consisting largely of correspondence and affidavits, served not only to clarify the parties' respective positions, but actually defined the factual issues remaining to be determined at trial.

KRAUSMAN, J.P., FISHER, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 4, 2007

DEER PARK ENTERPRISES, LLC v AIL SYSTEMS, INC., n/k/a EDO CORPORATION