

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

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Argued - November 27, 2007

DAVID S. RITTER, J.P.
ANITA R. FLORIO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2006-05413

DECISION & ORDER

Bruce Elias, et al., appellants, v Charlotte
Ferri, et al., respondents.

(Index No. 01-20877)

Long, Tuminello, Besso, Seligman & Werner, LLP, Bay Shore, N.Y. (David Besso and Michelle Aulivola of counsel), for appellants.

Pelle & Pelle, Massapequa, N.Y. (Dominick A. Pelle of counsel), for respondents.

In an action, inter alia, to recover damages for conversion, the plaintiffs appeal from a judgment of the Supreme Court, Suffolk County (Baisley, J.), dated April 5, 2006, which, after a jury trial, and upon the granting of the defendants' motion pursuant to CPLR 4401, made at the close of evidence, to dismiss the complaint for failure to establish a prima facie case, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Viewing the evidence in the light most favorable to the plaintiffs and giving them the benefit of every favorable inference (*see Rotta v Ferreira*, 16 AD3d 399; *Zboray v Fessler*, 154 AD2d 367), the Supreme Court properly granted the defendants' motion pursuant to CPLR 4401, made at the close of evidence, to dismiss the complaint for failure to establish a prima facie case. The evidence presented at trial conclusively demonstrated that all of the elements required by Paragraph 22 of the subject lease, in order for the personal property at issue to be deemed abandoned by the plaintiffs and to become the personal property of the defendants, were satisfied. Specifically, the

December 18, 2007

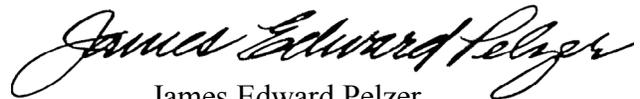
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plaintiffs were in default in rent payments, they were dispossessed of the premises, and they failed to remove the property at issue prior to the default or prior to the issuance of the final order or execution of the warrant of eviction.

RITTER, J.P., FLORIO, McCARTHY and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court