

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

D17407
X/kmg

_____AD3d_____

Argued - November 20, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-03803

DECISION & ORDER

Alexander Bladykas, respondent, v
County of Nassau, appellant.

(Index No. 12994/04)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson of counsel), for
appellant.

Thomas F. Liotti, Garden City, N.Y. (Lucia Maria Ciaravino of counsel), for
respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant
appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County
(Martin, J.), entered April 6, 2007, as denied that branch of its motion which was for summary
judgment dismissing the complaint.

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

The defendant failed to make a prima facie showing of entitlement to judgment as a
matter of law since it did not tender sufficient evidence to demonstrate the absence of any material
issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Winegrad v New York Univ. Med. Ctr.*,
64 NY2d 851). Accordingly, the Supreme Court properly denied that branch of the defendant's
motion which was for summary judgment dismissing the complaint (*see Alvarez v Prospect Hosp.*,
68 NY2d 320).

In reaching our determination herein, we have not considered evidence which is dehors

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the record with respect to the order appealed from (*see Juarbe v City of New York*, 303 AD2d 462; *Matter of Hogg v Cianciulli*, 247 AD2d 474, 475; *Gintell v Coleman*, 136 AD2d 515, 516-517; *see also Kryzanowski v Eveready Ins. Co.*, 28 AD3d 613).

The defendant's remaining contentions are without merit.

RIVERA, J.P., SPOLZINO, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court