

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

D18332
O/prt

_____AD3d_____

Argued - February 5, 2008

ROBERT A. LIFSON, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2007-07083

DECISION & ORDER

Hannelore Dreifus, respondent, v Heimeshe
Bakery Corp., et al., appellants, et al., defendants.

(Index No. 34509/06)

Thomas Weiss, P.C., Mineola, N.Y., for appellants.

Goldfarb & Goldfarb, Brooklyn, N.Y. (Aaron M. Feldman of counsel), for
respondent.

In an action, inter alia, to recover damages for breach of a lease, the defendants Heimeshe Bakery Corp., Heimeshe Cof, Inc., d/b/a Ostrovitsky Bakery, Yair Ostrovitsky, and Jacob Ostrovitsky appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Ambrosio, J.), dated July 9, 2007, as denied that branch of their motion which was pursuant to CPLR 3211(a) to dismiss the sixth cause of action insofar as asserted against them.

ORDERED that the appeal by the defendant Heimeshe Bakery Corp. is dismissed as abandoned (*see* 22 NYCRR 670.8[e]); and it is further,

ORDERED that the order is reversed insofar as appealed from by the defendants Heimeshe Cof, Inc., d/b/a Ostrovitsky Bakery, Yair Ostrovitsky, and Jacob Ostrovitsky, on the law, and that branch of the motion which was to dismiss the sixth cause of action insofar as asserted against those defendants is granted; and it is further,

ORDERED that one bill of costs is awarded to the defendants Heimeshe Cof, Inc., d/b/a Ostrovitsky Bakery, Yair Ostrovitsky, and Jacob Ostrovitsky.

March 11, 2008

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“On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is to be afforded a liberal construction (*see* CPLR 3026). We accept the facts as alleged in the complaint as true, accord [the] plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88). Here, even after according the plaintiff the benefit of every possible inference, we conclude that the sixth cause of action fails to state any cognizable legal ground for the recovery of damages against the defendants Heimeshe Cof, Inc., d/b/a Ostrovitsky Bakery, Yair Ostrovitsky, and Jacob Ostrovitsky (*see Widman v Rosenthal*, 40 AD3d 749). Accordingly, the Supreme Court should have granted that branch of the motion which was to dismiss the sixth cause of action insofar as asserted against those defendants.

The parties’ remaining contentions are without merit.

LIFSON, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court