

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

D18449  
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Argued - February 14, 2008

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
WILLIAM E. McCARTHY  
ARIEL E. BELEN, JJ.

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2006-01895

DECISION & ORDER

Flexible Business Systems, Inc., respondent,  
v Dag Media, Inc., et al., appellants.

(Index No. 18065/01)

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Ofeck & Heinze, LLP, New York, N.Y. (Mark F. Heinze of counsel), for appellants.

Lazer, Aptheker, Rosella & Yedid, P.C., Melville, N.Y. (Todd M. Gardella, Zachary Murdock, and Amy E. Bedell of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal from a judgment of the Supreme Court, Suffolk County (Kerins, J.), entered January 24, 2006, which, after a nonjury trial, and upon a decision of the same court dated January 3, 2006, is in favor of the plaintiff and against them in the total sum of \$54,988.94.

ORDERED that the judgment is affirmed, with costs.

In reviewing a determination made after a nonjury trial, this Court's power is as broad as that of the trial court, and it may render the judgment it finds warranted by the facts, taking into account that in a close case the trial judge had the advantage of seeing and hearing the witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Narendra v Thieriot*, 41 AD3d 442, 443).

Where, as here, the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms (*see Bailey v Fish & Neave*, 8 NY3d 523, 528; *South Rd. Assoc, LLC v International Bus. Machs. Corp.*, 4 NY3d 272, 277; *W.W.W. Assoc. v*

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*Giacontieri*, 77 NY2d 157, 162). The Supreme Court correctly determined that the defendants, rather than the plaintiff, breached the parties' written agreement. The plaintiff was obligated under the contract, inter alia, to convert two specific software files to a new accounting program. However, the contract expressly warranted that any work performed thereunder was subject to the limitations of the new program. The plaintiff established by a preponderance of the credible evidence that it converted the two files to the extent the data in those files could be accommodated by the new program. Accordingly, the Supreme Court did not err in finding in favor of the plaintiff on its cause of action alleging breach of contract.

The plaintiff also established, by a preponderance of the credible evidence, that the defendants were liable to it for outstanding amounts due on unpaid invoices under a theory of account stated.

The defendants' remaining contentions are without merit.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court