

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

D19474
G/kmg

_____AD3d_____

Argued - May 6, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2007-06174

DECISION & ORDER

Morris Sendor, et al., appellants, v Matthew Chervin, et al., defendants, Cary Rosner, respondent.

(Index No. 6261/05)

Anthony A. Capetola, Williston Park, N.Y., for appellants.

Robinson, Brog, Leinwand, Greene, Genovese & Glick, P.C., New York, N.Y. (Gary P. Adelman and Jeremy J. Bethel of counsel), for respondent.

In an action, inter alia, to recover damages for breach of a covenant not to compete, the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Doyle, J.), dated May 21, 2007, which granted the motion of the defendant Cary Rosner for summary judgment dismissing the first, third, fifth, and seventh causes of action insofar as asserted against him.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Cary Rosner for summary judgment dismissing the first, third, fifth, and seventh causes of action insofar as asserted against him is denied.

The defendant Cary Rosner failed to include a complete set of the pleadings in support of his summary judgment motion, as required by CPLR 3212(b). Accordingly, he was not entitled to summary judgment and denial of his motion was required (*see Thompson v Foreign Cars Ctr., Inc.*, 40 AD3d 965; *Matsyuk v Konkali*, 35 AD3d 675; *Sted Tenants Owners Corp. v Chumpitaz*, 5 AD3d 663).

May 27, 2008

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SENDOR v CHERVIN

In light of our determination, we need not reach the plaintiffs' remaining contentions.

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court