

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

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_____AD3d_____

Argued - May 8, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-06344

DECISION & ORDER

Peter Jurmann, et al., respondents, v Heimer
Engineering, P.C., appellant (and a third-party action).

(Index No. 11525/05)

Lawrence Van Dyke, Roslyn Heights, N.Y., for appellant.

Ralph A. Hummel, Woodbury, N.Y., for respondents.

In an action to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Nassau County (Mahon, J.), dated May 30, 2007, which denied its motion for summary judgment dismissing the complaint or, alternatively, for partial summary judgment dismissing the complaint to the extent that it seeks to recover damages in excess of the amount of the inspection fee.

ORDERED that the order is affirmed, with costs.

The defendant demonstrated its prima facie entitlement to judgment as a matter of law by submitting evidence that the parties entered into a written agreement dated June 10, 1999, defining their relationship and limiting the defendant's liability to the amount of its inspection fee, and that it performed its obligations under the contract in accordance with relevant industry standards. In opposition, however, the plaintiffs raised triable issues of fact, inter alia, as to whether the parties were bound by the 1999 written agreement or a subsequent oral contract. Accordingly, the defendant's motion for summary judgment was properly denied (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320).

RIVERA, J.P., SPOLZINO, DICKERSON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 3, 2008

JURMANN v HEIMER ENGINEERING, P.C.