

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

D19667
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_____AD3d_____

Argued - May 15, 2008

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
ARIEL E. BELEN, JJ.

2007-03528

DECISION & ORDER

Sharper Properties Enterprises, Inc., appellant,
v Hubbard Sand & Gravel, Inc., respondent.

(Index No. 21862/02)

Rosenberg Calica & Birney, LLP, Garden City, N.Y. (Robert M. Calica of counsel),
for appellant.

Glynn Mercep and Purcell, LLP, Stony Brook, N.Y. (Timothy B. Glynn of counsel),
for respondent.

In an action, inter alia, for a judgment declaring that the defendant effected an actual, partial eviction of the plaintiff from certain premises in violation of a lease and to recover damages for trespass and injury to the premises, the plaintiff appeals from a judgment of the Supreme Court, Suffolk County (Emerson, J.), entered April 5, 2007, which, after a nonjury trial, awarded only nominal damages for trespass in the sum of \$1 and, in effect, awarded \$0 damages for injury to the premises.

ORDERED that the judgment is modified, on the law, by adding a provision thereto declaring that the defendant effected an actual, partial eviction of the plaintiff from the leased premises; as so modified, the judgment is affirmed insofar as appealed from, with costs to the defendant.

June 17, 2008

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SHARPER PROPERTIES ENTERPRISES, INC. v HUBBARD SAND & GRAVEL, INC.

The Supreme Court properly awarded only nominal damages of \$1 since the plaintiff failed to establish the proper measure of its damages for actual partial eviction (*see Long Is. Airports Limousine Serv. Corp. v Northwest Airlines*, 124 AD2d 711).

The plaintiff's remaining contentions are without merit.

Since this is, in part, a declaratory judgment action, the Supreme Court, Suffolk County, should have included in the judgment appealed from an appropriate declaration in favor of the plaintiff (*see Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).

FLORIO, J.P., ANGIOLILLO, CARNI and BELEN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court