

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

D19723
O/kmg

_____AD3d_____

Argued - May 16, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-02160

DECISION & ORDER

Castle Oil Corporation, respondent,
v Ghazi Bokhari, etc., appellant.

(Index No. 20189/06)

Ghazi Bokhari, Jamaica, N.Y., appellant pro se.

Michael M. Meadvin, Harrison, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract and for an account stated, the defendant appeals from a judgment of the Supreme Court, Westchester County (Smith, J.), entered January 25, 2007, which, upon an order of the same court dated January 23, 2007, granting the plaintiff's motion for summary judgment, is in favor of the plaintiff and against him in the principal sum of \$21,045. The notice of appeal from the order dated January 23, 2007, is deemed to be a notice of appeal from the judgment entered January 25, 2007 (*see* CPLR 5512[a]).

ORDERED that the judgment is affirmed, with costs.

The plaintiff made a prima facie showing of its entitlement to judgment as a matter of law on its breach of contract cause of action by tendering admissible evidence that it delivered oil and provided services to the defendant, for which the defendant did not pay (*see Boise Cascade Off. Prods. Corp. v Gilman & Ciocia, Inc.*, 30 AD3d 454; *Becker v Shore Drugs*, 296 AD2d 515; *Neuman Distribs. v Falak Pharm. Corp.*, 289 AD2d 310, 311; *Drug Guild Distribs. v 3-9 Drugs*, 277 AD2d 197, 198). The plaintiff also established its prima facie entitlement to judgment as a matter of law on its cause of action for an account stated by demonstrating that the defendant failed to object to the invoices that the plaintiff sent to him in the ordinary course of business (*see American Express*

June 24, 2008

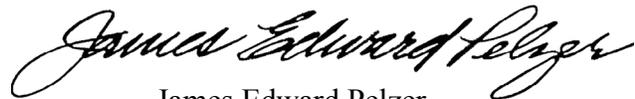
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Centurion Bank v Williams, 24 AD3d 577, 578; *Casa Redimix Concrete Corp. v MacQuesten Gen. Contr., Inc.*, 14 AD3d 641, 642; *Neuman Distribs. v Jacobi Med. Ctr.*, 298 AD2d 568). The defendant's affidavit in opposition to the motion for summary judgment was insufficient to raise a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 562; *Boise Cascade Off. Prods. Corp. v Gilman & Cioca, Inc.*, 30 AD3d 455; *Neuman Distribs. v Jacobi Med. Ctr.*, 298 AD2d 569; *Becker v Shore Drugs*, 296 AD2d at 515; *Drug Guild Distribs. v 3-9 Drugs Inc.*, 277 AD2d at 198).

The defendant's remaining contentions are without merit.

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

ENTER:



James Edward Pelzer
Clerk of the Court