

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

D19806  
X/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 27, 2008

A. GAIL PRUDENTI, P.J.  
PETER B. SKELOS  
JOSEPH COVELLO  
RUTH C. BALKIN, JJ.

---

2007-06333  
2007-07320

DECISION & ORDER

Northport Car Wash, Inc., respondent, v Northport  
Car Care, LLC, et al., appellants.

(Index No. 06-019521)

---

Jonathan A. Stein, P.C., Cedarhurst, N.Y., for appellants.

Weinstein, Kaplan & Cohen, P.C., Garden City, N.Y. (Alexander Mark Kaplan and  
Rebecca A. Provder of counsel), for respondent.

In an action to recover on a promissory note and guaranty brought by motion for summary judgment in lieu of complaint pursuant to CPLR 3213, the defendants appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Martin, J.), dated May 30, 2007, as granted the plaintiff's motion and denied that branch of their cross motion which was pursuant to CPLR 3211 to dismiss the action, and (2) from a judgment of the same court dated July 12, 2007, which, upon the order, is in favor of the plaintiff and against them in the sum of \$576,501.14.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

June 24, 2008

NORTHPORT CAR WASH, INC. v NORTHPORT CAR CARE, LLC

Page 1.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

The plaintiff established its prima facie entitlement to judgment as a matter of law by submitting, in support of its motion, proof of the promissory note and guaranty, and of the defendants' failure to make the payments provided for by their terms (*see Governor & Co. of Bank of Ireland v Dromoland Castle*, 212 AD2d 759). In response, the defendants failed to raise a triable issue of fact with respect to a bona fide defense (*see Gateway State Bank v Shangri-La Private Club for Women*, 113 AD2d 791, 792, *affd* 67 NY2d 627; *Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137-138, *affd* 29 NY2d 617). Accordingly, the Supreme Court properly granted the plaintiff's motion (*see Governor & Co. of Bank of Ireland v Dromoland Castle*, 212 AD2d 759).

The defendants' remaining contentions are without merit.

PRUDENTI, P.J., SKELOS, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court