

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

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Submitted - June 3, 2008

PETER B. SKELOS, J.P.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2006-08130

DECISION & ORDER

Nancy J. Tilton, et al., appellants, v Gary Trezza,
et al., respondents (and another action).

(Index No. 5818/03)

Robert F. Van Der Waag, Mineola, N.Y., for appellants.

Certilman Balin Adler & Hyman, LLP, East Meadow, N.Y. (John H. Gionis of
counsel), for respondent Gary Trezza.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Michael T. Colavecchio of
counsel), for respondent James T. Hytner.

In an action, inter alia, to rescind the transfer of title to real property on the basis of
fraudulent inducement and to recover damages for fraud, the plaintiffs appeal, as limited by their brief,
from so much of a judgment of the Supreme Court, Nassau County (Warshawsky, J.), dated June 21,
2006, as, upon a jury verdict in favor of the defendants and against them, and upon the denial of their
motion pursuant to CPLR 4404(a) to set aside the jury verdict based on alleged errors in the jury
instructions, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

Contrary to the plaintiffs' contention, the jury verdict was supported by a fair
interpretation of the evidence (*see Nicastro v Park*, 113 AD2d 129, 134).

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The plaintiffs' contentions that the trial court's instructions to the jury did not adequately address their factual claims do not warrant reversal since the plaintiffs failed to demonstrate prejudice (*see Blanchard v Whitlark*, 286 AD2d 925) and the specific factual allegations omitted from the trial court's instructions were not supported by the evidence. The plaintiffs' remaining contentions, inter alia, with respect to the instructions regarding the alleged legal malpractice of the defendant James T. Hytner are unpreserved for appellate review and, in any event, are without merit.

SKELOS, J.P., MILLER, CARNI and CHAMBERS, 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

July 22, 2008