

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

D20069  
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Submitted - June 12, 2008

ROBERT A. SPOLZINO, J.P.  
STEVEN W. FISHER  
EDWARD D. CARNI  
THOMAS A. DICKERSON, JJ.

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2007-11063

DECISION & ORDER

Ronald Zellner, et al., respondents, v Paul Tarnell,  
et al., appellants.

(Index No. 17540/07)

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Carl F. Lodes, Carmel, N.Y., for appellants.

Matthew A. Noviello, Carmel, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of contract for the sale of real property, the defendants appeal from an order of the Supreme Court, Westchester County (Loehr, J.), dated November 15, 2007, which granted the plaintiffs' motion, in effect, for summary judgment awarding them the down payment as liquidated damages under the contract.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion, in effect, for summary judgment is denied.

The plaintiffs sellers failed to include a complete set of the pleadings and an affidavit in support of their motion for summary judgment, as required by CPLR 3212(b). Accordingly, they were not entitled to summary judgment, and denial of their motion was required (*see Sendor v Chervin*, 51 AD3d 1003; *Thompson v Foreign Cars Ctr., Inc.*, 40 AD3d 965; *Matsyuk v Konkalipos*, 35 AD3d 675).

August 5, 2008

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In light of our determination, we need not reach the appellants' remaining contentions.

SPOLZINO, J.P., FISHER, CARNI and DICKERSON, JJ., concur.

ENTER:

  
James Edward Helzer  
Clerk of the Court