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

D20478
O/kmg

_____AD3d_____ Submitted - September 3, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-09261 DECISION & ORDER

Gary Scofield, et al., appellants, v
John DeGroodt, et al., respondents.

(Index No. 0435/06)

Goldstein & Metzger, LLP, Poughkeepsie, N.Y. (Paul J. Goldstein of counsel), for appellants.

David A. Sears, Poughkeepsie, N.Y., for respondents.

In an action, inter alia, to recover damages for the use and occupancy of real property, the plaintiffs appeal from an order of the Supreme Court, Dutchess County (Pagones, J.), dated September 19, 2007, which denied their motion pursuant to CPLR 3025(b) for leave to amend the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiffs' motion for leave to amend the complaint, inter alia, to add a cause of action alleging unjust enrichment and to recover in quantum meruit. In the absence of prejudice or surprise to the opposing party, a motion for leave to amend the complaint pursuant to CPLR 3025(b) should be freely granted unless the proposed amendment is "palpably insufficient" to state a cause of action or is patently devoid of merit (*Lucido v Mancuso*, 49 AD3d 220, 229; *see Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d 804; *Trataros Constr., Inc. v New York City School Constr. Auth.*, 46 AD3d 874; *G.K. Alan Assoc., Inc. v Lazzari*, 44 AD3d 95, 99). Here, the insufficiency and lack of merit of the

plaintiffs' proposed amended claims that, inter alia, the defendants were unjustly enriched at their expense are clear and free from doubt (*see Lucido v Mancuso*, 49 AD3d at 227; *see generally Bradkin v Leverton*, 26 NY2d 192, 196-197; *Old Republic Natl. Tit. Ins. Co. v Luft*, 52 AD3d 491, 492).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court