

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

D20697  
G/kmg

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Argued - September 19, 2008

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO, JJ.

2007-09179

DECISION & ORDER

Kofi N. Bonney, plaintiff-respondent, v 5PG, LLC,  
appellant, Alten, Inc., defendant-respondent, et al.,  
defendants.

(Index No. 32087/06)

Michael S. Winokur, Flushing, N.Y., for appellant.

Ruth A. R. Fermin, Brooklyn, N.Y., for plaintiff-respondent.

Dollinger, Gonski & Grossman, Carle Place, N.Y. (Michael J. Spithogiannis and  
Leslie A. Foodim of counsel), for defendant-respondent.

In an action, inter alia, to recover damages for fraud, the defendant 5PG, LLC, appeals from an order of the Supreme Court, Kings County (Johnson, J.), dated September 20, 2007, which denied its motion pursuant to CPLR 3211(a)(7) to dismiss the complaint and the cross claims of the defendant Alten, Inc., insofar as asserted against it, and granted the motion of the defendant Alten, Inc., for leave to amend its answer, among other things, to assert an additional cross claim.

ORDERED that the order is affirmed, with one bill of costs.

In considering a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court should “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88). Applying these principles, we find that the complaint states cognizable causes of action against the appellant, inter alia, to recover damages for

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fraud. Accordingly, the Supreme Court correctly denied that branch of the appellant's motion which was to dismiss the complaint insofar as asserted against it (*see* CPLR 3211[a][7]).

The appellant's remaining contentions are without merit.

RIVERA, J.P., DILLON, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court