

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

D20877
W/prt

_____AD3d_____

Argued - October 7, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2008-01076

DECISION & ORDER

Ingenuit, Ltd., et al., respondents,
v Michael Harriff, appellant.

(Index No. 37317/05)

Bainton McCarthy LLC, New York, N.Y. (J. Joseph Bainton of counsel), for appellant.

Reitler Brown & Rosenblatt LLC, New York, N.Y. (Jocelyn Jacobson of counsel), for respondents.

In an action, inter alia, to recover damages for breach of an employment contract, the defendant appeals from an order of the Supreme Court, Kings County (Ambrosio, J.), dated January 7, 2008, which granted the plaintiffs' motion to strike his demand for a jury trial.

ORDERED that the order is affirmed, with costs.

The main relief sought by the plaintiffs in this action is an injunction against the defendant's continued solicitation of the plaintiffs' clients and use of the plaintiffs' proprietary information to unfairly compete against them. Since the primary character of the case is equitable and the plaintiffs' damages claims are merely incidental thereto, there is no right to a jury trial (*see* CPLR 4101; *Downtown Art Co. v Zimmerman*, 227 AD2d 226; *Agrawal v Razgaitis*, 209 AD2d 566; *Homburger v Levitin*, 140 AD2d 583, 584). Moreover, the defendant's counterclaim, despite containing a demand for damages, is also equitable in nature since it relates directly to the injunctive relief sought by the plaintiffs in the complaint (*see Magill v Dutchess Bank & Trust Co.*, 150 AD2d 531, 531-532). Accordingly, the Supreme Court properly granted the plaintiffs' motion to strike the defendant's demand for a jury trial.

November 5, 2008

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The defendant's remaining contentions either are without merit or have been rendered academic by our determination.

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, 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