

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

D21136

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Submitted - October 3, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-00036

DECISION & ORDER

Bill's Towing Service, Inc., et al., respondents, v
County of Nassau, appellant.

(Index No. 7125/04)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of counsel;
Orianna Mazza on the brief), for appellant.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Phelan, J.), entered December 1, 2006, as denied that branch of its motion which was for summary judgment dismissing the third and fourth causes of action to recover damages for breach of contract.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the defendant's contentions, the Supreme Court properly denied that branch of its motion which was for summary judgment dismissing the third and fourth causes of action to recover damages for breach of contract. In response to the defendant's prima facie showing of entitlement to summary judgment dismissing those causes of action, the plaintiffs raised a triable issue of fact as to whether the defendant breached the implied covenant of good faith (*see Sussman Sales Co. v Kaufman*, 269 AD2d 440; *Aventine Inv. Mgt. v Canadian Imperial Bank of Commerce*, 265 AD2d 513, 514).

The defendant's remaining contention is without merit.

MASTRO, J.P., SKELOS, BALKIN and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 18, 2008

BILL'S TOWING SERVICE, INC. v COUNTY OF NASSAU