

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

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_____AD3d_____

Argued - October 28, 2008

DAVID S. RITTER, J.P.
ANITA R. FLORIO
HOWARD MILLER
EDWARD D. CARNI, JJ.

2007-10155

DECISION & ORDER

Kimber Mfg., Inc., et al., appellants, v
Marcum & Kliegman, LLP, respondent.

(Index No. 20559/04)

Rosenfeld & Kaplan, LLP, New York, N.Y. (Tab K. Rosenfeld and Steven M. Kaplan of counsel), for appellants.

L'Abbate, Balkan, Colavita & Contini, LLP, Garden City, N.Y. (Daniel M. Maunz, Anthony P. Colavita, and Scott E. Kossove of counsel), for respondent.

In an action to recover damages for accountant malpractice, the plaintiffs appeal from an order of the Supreme Court, Westchester County (Liebowitz, J.), entered September 26, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

As the Supreme Court correctly determined, the defendant, Marcum & Kliegman, LLP (hereinafter M&K), demonstrated its prima facie entitlement to judgment as a matter of law by establishing that a provision in the letters by which it was retained by the plaintiff Kimber Mfg., Inc. (hereinafter Kimber), to perform certain accounting services unambiguously required Kimber to indemnify M&K under the circumstances presented (*see Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153; *Levine v Shell Oil Co.*, 28 NY2d 205, 211-212; *237 W. 230 St. Realty Corp. v Castle Oil Corp.*, 35 AD3d 847, 847; *New York Tel. Co. v Gulf Oil Corp.*, 203 AD2d 26, 27-28). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562).

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Accordingly, the Supreme Court properly granted the motion of M&K for summary judgment dismissing the complaint.

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

RITTER, J.P., FLORIO, MILLER 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