

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

D21634
X/prt

_____AD3d_____

Argued - November 25, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2008-03450
2008-06520

DECISION & ORDER

Kaplon-Belo Associates, Inc., respondent,
v Frank D'Angelo, et al., appellants.

(Index No. 25340/07)

William Paul Nolan, New York, N.Y., for appellants.

Reisman, Peirez & Reisman, LLP, Garden City, N.Y. (David Berg and E. Christopher Murray of counsel), for respondent.

In an action, inter alia, to recover a broker's commission on the sale of real property, the defendants appeal (1) from an order of the Supreme Court, Queens County (Agate, J.), dated March 3, 2008, which denied their motion to dismiss the complaint pursuant to CPLR 3211(a)(7) and (8), and (2), as limited by their brief, from so much of an order of the same court dated June 18, 2008, as, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated March 3, 2008, is dismissed, as that order was superseded by the order dated June 18, 2008, made upon reargument; and it is further,

ORDERED that the order dated June 18, 2008, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The Supreme Court properly denied the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7) and (8). Construing the pleadings in the light most favorable to the

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plaintiff, and accepting as true all its factual allegations (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Schlackman v Robin S. Weingast & Assoc., Inc.*, 18 AD3d 729, 729-730; *Montes Corp. v Charles Freihofers Baking Co., Inc.*, 17 AD3d 330), the plaintiff's complaint sufficiently states a cause of action against the defendants to recover a brokerage commission (*see Greene v Hellman*, 51 NY2d 197, 206; *Laney-Real Estate Dept. Store v Lawlet Corp.*, 28 NY2d 36, 42; *Stanzoni Realty Corp. v Landmark Prop. of Suffolk, Ltd.*, 19 AD3d 582; *Buck v Cimino*, 243 AD2d 681, 684).

The defendants' remaining contentions are without merit.

FISHER, J.P., FLORIO, CARNI and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court