

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

D21645
X/kmg

_____AD3d_____

Submitted - November 25, 2008

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

2008-05016

DECISION & ORDER

Foxen Company, respondent,
v Irish Pub, Ltd., et al., appellants.

(Index No. 13362/04)

Michael Konopka, New York, N.Y., for appellants.

Michael T. Lamberti, Woodbury, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal from a judgment of the Supreme Court, Nassau County (Dana, Ct. Atty. Ref.), dated October 19, 2007, which, inter alia, upon their default in appearing or answering, and after an inquest on the issue of damages at which they appeared, is in favor of the plaintiff and against them in the principal sum of \$118,501.50.

ORDERED that the judgment is affirmed, with costs.

The defendants waived the defense of lack of capacity to sue when they defaulted and failed to raise it in their subsequent motion to vacate their default (*see Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239).

The defendants' remaining contentions are without merit.

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

ENTER:


James Edward Pelzer

December 30, 2008

FOXEN COMPANY v IRISH PUB, LTD.

Clerk of the Court

December 30, 2008

FOXEN COMPANY v IRISH PUB, LTD.