

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

D22192
W/prt

_____AD3d_____

Argued - January 5, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2007-09645

DECISION & ORDER

Utility Audit Group, respondent-appellant, et al.,
plaintiff, v Apple Mac & R Corp., a/k/a Apple Mac
& R. Inc., d/b/a MacMenamin's Pub, et al.,
appellants-respondents.

(Index No. 2194/05)

Mackay Wrynn & Brady, LLP (Robin Mary Heaney, Rockville Centre, N.Y., of
counsel), for appellants-respondents.

John L. O'Kelly, East Williston, N.Y., plaintiff pro se and for respondent-appellant.

In an action, inter alia, to recover damages for breach of contract, to recover on an account stated, and to recover in quantum meruit for services rendered, the defendants appeal from so much of an order of the Supreme Court, Nassau County (Bucaria, J.), dated August 14, 2007, as denied their motion for leave to renew their opposition to that branch of the motion of the plaintiff Utility Audit Group which was for summary judgment on the first cause of action alleging breach of contract, which had been determined in an order dated August 30, 2005, and the plaintiff Utility Audit Group cross-appeals from the same order.

ORDERED that the cross appeal is dismissed as abandoned, without costs or disbursements; and it further,

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

February 24, 2009

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UTILITY AUDIT GROUP v APPLE MAC & R CORP.,
a/k/a APPLE MAC & R. INC., d/b/a MACMENAMIN'S PUB

The Supreme Court providently exercised its discretion in denying the defendants' motion pursuant to CPLR 2221(e) for leave to renew their opposition to that branch of UAG's motion which was for summary judgment on the first cause of action alleging breach of contract. The defendants did not satisfy the requirements of CPLR 2221(e), which provide, among other things, that a motion for leave to renew "shall be based on new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion" (*see Williams v Nassau County Med. Ctr.*, 37 AD3d 594).

The cross appeal must be dismissed as abandoned (*see Bibas v Bibas*, 58 AD3d 586), as the respondent-appellant does not seek reversal of any portion of the order in its brief.

SPOLZINO, J.P., SANTUCCI, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court