

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

D22412  
O/kmg

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Submitted - January 27, 2009

PETER B. SKELOS, J.P.  
DAVID S. RITTER  
ANITA R. FLORIO  
HOWARD MILLER, JJ.

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2008-02746

DECISION & ORDER

Byung W. Lim, appellant, v  
Choices, Inc., respondent.

(Index No. 11448/07)

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Tanenbaum Associates, LLP, Bayside, N.Y. (Mark J. Tanenbaum of counsel), for appellant.

Charles H. Small, New York, N.Y., for respondent.

In an action, inter alia, to recover unpaid rent, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Taylor, J.), dated February 7, 2008, as granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In support of that branch of its motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint, the defendant established that the parties entered into a stipulation of settlement through the submission of an affidavit of its president, an agreement memorializing the parties' agreement to settle and discontinue the instant action signed by both parties, and a copy of the bank check referenced in the agreement representing full settlement and satisfaction of all claims asserted in the action (*see* CPLR 2104). In opposition, the plaintiff submitted an affidavit in which he did not deny either signing the agreement or accepting and cashing the bank check. Thus, there was no dispute that the parties entered into a valid "out-of-court settlement [that was] adequately described in a signed writing" (*Bonette v Long Is. College Hosp.*, 3 NY3d 281, 286). Moreover,

March 10, 2009

Page 1.

LIM v CHOICES, INC.

contrary to the plaintiff's contention, notwithstanding the absence of the filing of a voluntary discontinuance under CPLR 3217, the documentary evidence proffered in support of the motion clearly evidenced the plaintiff's intent to release the defendant from the action (*see Gale v Citicorp*, 278 AD2d 197; *see also Spence v Jones*, 51 AD3d 771, 772; *Hanna v Ford Motor Co.*, 252 AD2d 478).

Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint.

The plaintiff's remaining contention is without merit.

SKELOS, J.P., RITTER, FLORIO and MILLER, 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