

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

D22671  
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Argued - February 26, 2009

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
JOHN M. LEVENTHAL, JJ.

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2008-01053

DECISION & ORDER

Michael Berkowitz, respondent, v Vivad, Inc.,  
et al., appellants, et al., defendants.

(Index No. 17894/04)

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

Raymond G. Lavalley, P.C., Farmingdale, N.Y. (Ryan L. Brownyard of counsel), for  
respondent.

In an action, inter alia, to recover damages for breach of contract, the defendants Vivad, Inc., and Leonid Shklyaver appeal from a judgment of the Supreme Court, Nassau County (Parga, J.), entered August 29, 2007, which, upon an order of the same court dated December 21, 2006, granting that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against them, is in favor of the plaintiff and against them in the principal sum of \$26,138.68.

ORDERED that the judgment is reversed, on the law, with costs, that branch of the motion which was for summary judgment on the complaint insofar as asserted against the appellants is denied, and the order dated December 21, 2006, is modified accordingly.

The plaintiff failed to establish his entitlement to judgment as a matter of law on any of the causes of action insofar as asserted against the appellants. Accordingly, that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the appellants should have been denied regardless of the sufficiency of the opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 324, 324-325).

April 7, 2009

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In light of our determination, the appellants' remaining contentions are academic.

SKELOS, J.P., FISHER, FLORIO and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer  
Clerk of the Court