

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

D22721  
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Submitted - March 3, 2009

ROBERT A. SPOLZINO, J.P.  
ANITA R. FLORIO  
JOSEPH COVELLO  
RANDALL T. ENG, JJ.

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2008-07573

DECISION & ORDER

M & W Registry, Inc., respondent, v Darshan  
Shah, appellant, et al., defendants.

(Index No. 33774/99)

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Meyers Tersigni Feldman & Gray, LLP, New York, N.Y. (Anthony L. Tersigni and  
Andrea Tersigni of counsel), for appellant.

Ryan Scott Karben, Monsey, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant Darshan Shah appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated May 19, 2008, as denied that branch of his motion which was, in effect, pursuant to CPLR 3126 and CPLR 3216 to dismiss the amended complaint insofar as asserted against him.

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

The appellant failed to demonstrate that dismissal of the amended complaint was appropriate pursuant to CPLR 3126 (*cf.* CPLR 3126[3]; *Sisca v City of Yonkers*, 24 AD3d 531, 532; *DeCintio v Ahmed*, 276 AD2d 463, 464), or CPLR 3216 (*cf.* CPLR 3216[b][3]; [e]). Accordingly, the Supreme Court properly denied that branch of the appellant's motion which was, in effect, pursuant to those statutes to dismiss the amended complaint insofar as asserted against him.

SPOLZINO, J.P., FLORIO, COVELLO and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

April 14, 2009

M & W REGISTRY, INC. v SHAH