

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

D22758
O/kmg

_____AD3d_____

Argued - March 3, 2009

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

2008-00654

DECISION & ORDER

Galil Importing Corp., respondent,
v Strauss, Ltd., f/k/a The Strauss-Elite Group,
appellant, et al., defendants (and another action).

(Index No. 3319/07)

Thelen Reid Brown Raysman & Steiner, LLP, New York, N.Y. (Barry G. Felder of counsel), for appellant.

Sheldon Eisenberger, New York, N.Y., for respondent.

In an action to recover damages for breach of an oral agreement, the defendant Strauss Ltd., f/k/a The Strauss-Elite Group, appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Spinola, J.), entered November 26, 2007, as denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof denying the appellant's motion for summary judgment dismissing the complaint insofar as asserted against it and substituting therefor a provision denying the motion with leave to renew following the completion of discovery; as so modified, the order is affirmed insofar as appealed from.

The plaintiff alleged that it had an oral agreement with Strauss Ltd., f/k/a The Strauss-Elite Group (hereinafter Strauss), to be the sole distributor of Strauss products in the tri-state area. Strauss distributes a variety of Israeli kosher foods in the United States. Strauss moved for summary judgment dismissing the complaint insofar as asserted against it, before discovery took place, arguing that it did not have an oral agreement with the plaintiff. The Supreme Court denied

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THE STRAUSS-ELITE GROUP

Strauss's motion. Strauss appeals.

Under the circumstances herein, Strauss's motion for summary judgment was premature since discovery had not yet taken place (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 506; *Rengifo v City of New York*, 7 AD3d 773, 776; *Lantigua v Mallick*, 263 AD2d 467, 468). Accordingly, the motion should have been denied with leave to renew following the completion of discovery.

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