

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

D23307  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 17, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
RUTH C. BALKIN, JJ.

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2008-06262

DECISION & ORDER

Meadow Lane Equities Corp., plaintiff-respondent,  
v Joey Hill, et al., appellants; First New York  
Partners, nonparty-respondent.

(Index No. 439/07)

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Russ & Russ, P.C., Massapequa, N.Y. (Jay Edmond Russ of counsel), for appellants.

Cohen & Warren, P.C., Smithtown, N.Y. (Michael F. Cohen and Evan M. Gitter of counsel), for plaintiff-respondent.

In an action, inter alia, for a permanent injunction, the defendants appeal from so much of an order of the Supreme Court, Nassau County (Phelan, J.), entered June 11, 2008, as denied their motion, inter alia, to direct nonparty First New York Partners to preserve certain evidence contained on electronic databases and to permit the examination thereof.

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

The Supreme Court properly exercised its discretion in determining that the defendants did not demonstrate unusual or unanticipated circumstances warranting the discovery requested through their motion (*see* 22 NYCRR 202.21[d]; *Gomez v New York City Tr. Auth.*, 19 AD3d 366, 366-367; *cf. Scanga v Family Practice Assoc. of Rockland, P.C.*, 41 AD3d 576, 576-577).

The defendants' remaining contentions are without merit.

June 2, 2009

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SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, 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