

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

D24465
Y/prt

_____AD3d_____

Argued - September 9, 2009

STEVEN W. FISHER, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL, JJ.

2005-07297

DECISION & ORDER

Domenico Monaco, appellant, v Benjamin
Van Meerendonk, et al., respondents.

(Index No. 7774/90)

Zerline L. Goodman, Brooklyn, N.Y., for appellant.

Patrick H. Barth, New York, N.Y., for respondents.

In an action, inter alia, to recover damages for fraud, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Douglass, J.), dated August 10, 2005, which, upon an order of the same court dated July 18, 2005, and after a nonjury trial, is in favor of the defendants and against him, in effect, dismissing the amended complaint.

ORDERED that the judgment is affirmed, with costs.

“Where, as here, a case is tried without a jury, this court’s power to review the evidence is as broad as that of the trial court, ‘taking into account in a close case the fact that the trial judge had the advantage of seeing the witnesses’” (*Terry v State of New York*, 39 AD3d 846, 846, quoting *Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499). On this record, there is no basis to disturb the trial court’s determination in favor of the defendants and against the plaintiff, in effect, dismissing the amended complaint based on the court’s express findings, inter alia, that the defendant Benjamin Van Meerendonk did not commit fraud or otherwise mislead the plaintiff in the course of their dealings.

We note that at trial Van Meerendonk essentially conceded that the plaintiff is the owner of one half of the shares of the defendant 82 Degraw Street Associates, Inc. Thus, contrary

to the plaintiff's claim on appeal, there was no necessity for the Supreme Court to issue an order declaring that the plaintiff is the owner of one half of the shares (*see* CPLR 3001).

The plaintiff's contention regarding a certain settlement agreement with respect to the instant case is not properly before this Court.

The plaintiff's remaining contentions are without merit.

FISHER, J.P., MILLER, ANGIOLILLO and HALL, 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