

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

D24480  
W/hu

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

Submitted - September 10, 2009

PETER B. SKELOS, J.P.  
JOSEPH COVELLO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

---

2008-08436

DECISION & ORDER

R. Della Realty Corp., et al., appellants, v  
Sunnymeade Leasing, LLC, et al., respondents.

(Index No. 101235/08)

---

Stephen Einstein & Associates, P.C., New York, N.Y., for appellants.

John Z. Marangos, Staten Island, N.Y. (Denise Marangos of counsel), for  
respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated July 18, 2008, as, in effect, granted that branch of the defendants' motion which was to dismiss the first cause of action insofar as asserted by the plaintiff R. Della Realty Corp. pursuant to CPLR 3211(a)(3).

ORDERED that the appeal by the plaintiff Richard Delli Paoli is dismissed, as he is not aggrieved by the portion of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed insofar as appealed from by the plaintiff R. Della Realty Corp., on the law, with costs, and that branch of the defendants' motion which was to dismiss the first cause of action insofar as asserted by the plaintiff R. Della Realty Corp. pursuant to CPLR 3211(a)(3) is denied.

On their motion, inter alia, to dismiss the complaint based on lack of capacity to sue (*see* CPLR 3211[a][3]), the defendants established that, several years before the instant action was

September 29, 2009

Page 1.

R. DELLA REALTY CORP. v SUNNYMEADE LEASING, LLC

commenced, the plaintiff Richard Delli Paoli commenced a bankruptcy proceeding, and was granted a discharge in bankruptcy. However, the plaintiff R. Della Realty Corp. was not a petitioner in that, or any other, bankruptcy proceeding. Under these circumstances, the Supreme Court should have denied that branch of the defendants' motion which was to dismiss the first cause of action insofar as asserted by R. Della Realty Corp. pursuant to CPLR 3211(a)(3) (*see R. Della Realty Corp. v Block 6222 Contr. Corp.*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]; *cf. Whelan v Longo*, 7 NY3d 821, 822; *Dynamics Corp. of Am. v Marine Midland Bank-New York*, 69 NY2d 191, 196-197; *Quiros v Polow*, 135 AD2d 697, 699-700).

SKELOS, J.P., COVELLO, LEVENTHAL and ROMAN, 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