

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

D24605
C/kmg

_____AD3d_____

Argued - April 30, 2009

PETER B. SKELOS, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2008-02305

DECISION & ORDER

MZM Corp., appellant, v John Iwaszkiewicz,
d/b/a Audio Video Connoisseur, respondent.

(Index No. 5147/04)

Friedman Kaplan Seiler & Adelman LLP, New York, N.Y. (Andrew W. Goldwater
of counsel), for appellant.

Mark Hus, New York, N.Y., for respondent.

In an action to recover damages for breach of contract, the plaintiff appeals from a judgment of the Supreme Court, Rockland County (Garvey, J.), dated January 24, 2008, which, upon an order of the same court dated January 2, 2008, granting the defendant's motion for summary judgment dismissing the complaint and for summary judgment on his counterclaims, is in favor of the defendant and against it in the principal sum of \$104,967.95.

ORDERED that the judgment is reversed, on the law, with costs, the defendant's motion for summary judgment dismissing the complaint and for summary judgment on his counterclaims is denied, and the order dated January 2, 2008, is modified accordingly.

The plaintiff, a general contractor hired to renovate a private apartment, entered into a subcontract with the defendant for the provision and installation of certain audio-visual equipment. After the defendant allegedly did not complete the installation of this equipment, the plaintiff commenced this action to recover damages for breach of contract. In his answer, the defendant alleged counterclaims sounding, inter alia, in quantum meruit.

As the evidence submitted by the defendant failed to demonstrate the absence of

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triable issues of fact regarding, among other things, whether he satisfied his obligations pursuant to the subcontract, whether the subcontract between the parties governed the same subject matter as the events for which he seeks recovery in quantum meruit, and the reasonable value of his services, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint and for summary judgment on his counterclaims (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

SKELOS, J.P., FISHER, BELEN and LOTT, 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