

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

D24832  
H/prt

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

Argued - September 22, 2009

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2008-09640

DECISION & ORDER

David Bruce McMahan, appellant,  
v Elena McMahan, respondent.

(Index No. 07/14070)

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The Wallack Firm, P.C., New York, N.Y. (Robert M. Wallack of counsel), for appellant.

Law Office of Yonatan S. Levoritz, P.C., Brooklyn, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Westchester County (Lubell, J.), entered September 29, 2008, as denied that branch of his motion which was for summary judgment on the issue of liability on the cause of action alleging breach of contract.

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

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). Here, the plaintiff failed to meet his prima facie burden of demonstrating entitlement to judgment as a matter of law on the cause of action alleging breach of

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contract (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Since the plaintiff failed to meet his prima facie burden, we need not consider the sufficiency of the defendant's opposition papers (*id.*). Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability on the cause of action alleging breach of contract.

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, 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