

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

D24900
W/kmg

_____AD3d_____

Submitted - October 13, 2009

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-11365

DECISION & ORDER

Michael Morreale, appellant, v Lisa Serrano,
respondent.

(Index No. 19998/07)

Barnes & Barnes, P.C., Garden City, N.Y. (Matthew J. Barnes of counsel), for
appellant.

Lisa Serrano, Effort, Pennsylvania, respondent pro se.

In an action, inter alia, to recover damages for breach of contract and unjust
enrichment, the plaintiff appeals from an order of the Supreme Court, Nassau County (Parga, J.),
dated November 19, 2008, which denied his motion for summary judgment on the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the plaintiff's motion for summary judgment on
the complaint, inasmuch as the plaintiff failed to meet his initial burden of establishing, by admissible
evidence, his prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*,
68 NY2d 320, 324). To the extent that the plaintiff relied on the defendant's response to his notice
to admit, that notice improperly sought the defendant's admissions to facts that went to "the heart
of the matter" (*Lolly v Brookdale Univ. Hosp. & Med. Ctr.*, 45 AD3d 537, 537; *see Glasser v City
of New York*, 265 AD2d 526). In light of our determination, we need not examine the sufficiency of
the papers submitted by the defendant in opposition to the motion (*see Winegrad v New York Univ.*

November 4, 2009

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Med. Ctr., 64 NY2d 851, 853).

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., FISHER, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court