

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

D26207
Y/prt

_____AD3d_____

Submitted - January 12, 2010

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
HOWARD MILLER
RANDALL T. ENG, JJ.

2009-02722

DECISION & ORDER

James Oliveri, appellant, v
Gregory Davis, respondent.

(Index No. 23019/06)

Cooper, Paroff, Cooper & Cook, Kew Gardens, N.Y. (Ira G. Cooper of counsel), for appellant.

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Nancy Silverman of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Mayer, J.), dated February 9, 2009, which granted the defendant's motion for summary judgment dismissing the amended complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff contends that he suffered certain damages as a result of the defendant's breach of an oral partnership agreement or oral joint venture agreement to deal in real property (*cf. Pisciotto v Dries*, 306 AD2d 262, 263; *Barash v Estate of Sperlin*, 271 AD2d 558, 559; *Walsh v Rechler*, 151 AD2d 473). The defendant demonstrated his prima facie entitlement to judgment as a matter of law by establishing, inter alia, that the parties never entered into a partnership agreement or joint venture agreement (*see Matter of Steinbeck v Gerosa*, 4 NY2d 302, 317; *Goodstein Props. v Rego*, 266 AD2d 506). In opposition, the plaintiff failed to raise a triable issue of fact (*see Goodstein Props. v Rego*, 266 AD2d 506). Accordingly, the Supreme Court properly granted the

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defendant's motion for summary judgment dismissing the amended complaint.

COVELLO, J.P., SANTUCCI, MILLER and ENG, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court