

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

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_____AD3d_____

Submitted - January 6, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-07122

DECISION & ORDER

Eduard Gitlin, respondent, v Alex Chirinkin, et al.,
appellants, et al., defendant.

(Index No. 12131/07)

Albert Feinstein, New York, N.Y., for appellants.

Barbara Lee Ford, Floral Park, N.Y., for respondent.

In an action, inter alia, to recover damages for fraud, the defendants Alex Chirinkin, Nellie Chirinkin, Alex Chirinkin, LLC, and Alex Chirinkin Enterprises, LLC, appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Bucaria, J.), entered July 7, 2009, as denied their motion to compel the plaintiff to produce certain disclosure and for a protective order pursuant to CPLR 3103.

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

The Supreme Court did not improvidently exercise its discretion in denying that branch of the appellants' motion which was to compel the plaintiff to disclose his tax returns and bank records. The appellants failed to demonstrate that any information in the tax returns was indispensable to their defense or counterclaim and could not be obtained from other sources (*see Pugliese v Mondello*, 57 AD3d 637; *Latture v Smith*, 304 AD2d 534, 536; *see also Banigan v Hill*, 57 AD3d 463; *Benfeld v Fleming Props., LLC*, 44 AD3d 599). Moreover, the appellants failed to demonstrate that the plaintiff's bank records were material and necessary to their defense or counterclaim (*see CPLR 3101[a]*; *Auerbach v Klein*, 30 AD3d 451).

March 9, 2010

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The plaintiff sustained his burden of demonstrating that the appellants should be required to disclose their tax returns (*see Kerman v Martin Friedman, C.P.A., P.C.*, 21 AD3d 997). In addition, the plaintiff also clearly demonstrated that the bank records he requested of the appellants were material and necessary to the pursuit of his claims that the defendants had defrauded him. Accordingly, the Supreme Court providently exercised its discretion in denying that branch of the appellants' motion which was for a protective order pursuant to CPLR 3103.

FISHER, J.P., SANTUCCI, ANGIOLILLO, HALL 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