

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

D27349
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_____AD3d_____

Argued - April 7, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
DANIEL D. ANGIOLILLO, JJ.

2008-10850

DECISION & ORDER

September's Food Systems, LLC, et al., appellants,
v WIH Hotels, LLC, et al., respondents.
(Action No. 1)

September's Food Systems, LLC, et al., appellants,
v BRE/Wellesley Properties, LLC, respondent.
(Action No. 2)

(Index Nos. 14159/08, 11594/06)

Katz & Klein, Croton-on-Hudson, N.Y. (Gerald M. Klein of counsel), for appellants
in both actions.

Kantrowitz, Goldhamer & Graifman, P.C., Chestnut Ridge, N.Y. (Reginald H.
Rutishauser of counsel), for respondents in both actions.

In two related actions, inter alia, to recover damages for breach of contract, the
plaintiffs in both actions appeal, as limited by their brief, from so much of an order of the Supreme
Court, Westchester County (Smith, J.), dated October 31, 2008, as, upon converting that branch of
the defendants' motion in Action No. 1 which was pursuant to CPLR 3211(a)(3) to dismiss the
complaint into one pursuant to CPLR 3212 for summary judgment dismissing the complaint, granted
that branch of the motion, and granted that branch of the defendants' motion in Action No. 2 which
was for summary judgment dismissing the complaint.

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

May 11, 2010

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In response to the defendants' prima facie showing of their entitlement to judgment as a matter of law, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557). Thus, the Supreme Court properly awarded summary judgment to the defendants dismissing the complaints in both actions.

DILLON, J.P., FLORIO, MILLER and ANGIOLILLO, 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