

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

D28056  
H/prt

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

Submitted - June 1, 2010

STEVEN W. FISHER, J.P.  
PLUMMER E. LOTT  
LEONARD B. AUSTIN  
SANDRA L. SGROI, JJ.

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2009-09352

DECISION & ORDER

Navillus Tile, Inc., doing business as Navillus  
Contracting, appellant, v Concore Construction,  
Inc., et al., respondents.

(Index No. 19166/05)

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Elias C. Schwartz, Great Neck, N.Y. (Michelle Englander of counsel), for appellant.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Geller, Special Referee), entered August 27, 2009, which, upon a decision of the same court dated August 18, 2008, made after a nonjury trial, is in favor of the defendants and against it dismissing the complaint.

ORDERED that the judgment is affirmed, without costs or disbursements.

In reviewing a determination made after a nonjury trial, the power of the Appellate Division is as broad as that of the trial court and it may render the judgment it finds warranted by the facts, taking into account that in a close case the trial judge had the advantage of seeing and hearing the witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *6243 Jericho Realty Corp. v AutoZone, Inc.*, 71 AD3d 983, 984, *lv denied* \_\_\_\_\_NY3d\_\_\_\_\_, 2010 NY Slip Op 74506 [2010]; *Vandenburg & Feliu, LLP v Interboro Packaging Corp.*, 70

June 29, 2010

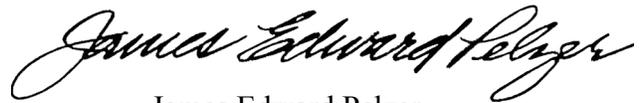
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NAVILLUS TILE, INC., doing business as NAVILLUS CONTRACTING  
v CONCORE CONSTRUCTION, INC.

AD3d 931, 931-932). Here, we find that the judgment of the Supreme Court dismissing the complaint was warranted by the facts presented at trial.

FISHER, J.P., LOTT, AUSTIN and SGROI, 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