

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

D29004  
W/kmb

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

Argued - October 5, 2010

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
SHERI S. ROMAN, JJ.

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2009-07846

DECISION & ORDER

Goldberg & Connolly, respondent, v Romano  
Enterprises of New York, Inc., defendant, Albert  
Romano, appellant.

(Index No. 16922/08)

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Niehaus LLP, New York, N.Y. (Paul R. Niehaus of counsel), for appellant.

Goldberg & Connolly, Rockville Centre, N.Y. (Theresa Brennan Murphy of counsel),  
respondent pro se.

In an action, inter alia, to recover unpaid legal fees, the defendant Albert Romano appeals from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), dated June 30, 2009, as denied his motion pursuant to CPLR 3211(a) to dismiss the sixth cause of action to recover damages for fraudulent misrepresentation insofar as asserted against him.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion of the defendant Albert Romano to dismiss the sixth cause of action to recover damages for fraudulent misrepresentation insofar as asserted against him is granted.

Contrary to the determination of the Supreme Court, the sixth cause of action alleging fraudulent misrepresentation should have been dismissed insofar as asserted against the defendant Albert Romano (hereinafter the appellant) for failure to state a cause of action (*see* CPLR 3211[a][7]). The plaintiff law firm, which entered into an agreement to represent the appellant, did not allege that the appellant made a material misrepresentation concerning his intention to satisfy a fee obligation collateral or extraneous to the agreement, and the damages that it sought to recover for fraudulent misrepresentation are the same as the damages recoverable for breach of contract (*see Lee v Matarrese*, 17 AD3d 539; *Americana Petroleum Corp. v Northville Indus. Corp.*, 200 AD2d 646).

November 9, 2010

Page 1.

GOLDBERG & CONNOLLY v ROMANO ENTERPRISES OF NEW YORK, INC.

In light of our determination, we do not reach the appellant's remaining contention.

DILLON, J.P., FLORIO, BALKIN and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court