

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

D29051
G/kmb

_____AD3d_____

Submitted - October 14, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
SANDRA L. SGROI, JJ.

2009-10277

DECISION & ORDER

Marjam Supply Company, Inc., respondent, v
Drywall Surgeon Specialists, Inc., defendant,
Anthony Orlando, appellant.

(Index No. 1002/09)

Alan Polsky, Bohemia, N.Y., for appellant.

Stephanie J. Donato, Newburgh, N.Y., for respondent.

In an action, inter alia, to recover damages for goods sold and delivered, the defendant Anthony Orlando appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Orange County (Onofry, J.), dated September 21, 2009, as, upon an order of the same court dated September 17, 2009, granting that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against him, is in favor of the plaintiff and against him in the principal sum of \$85,037.77.

ORDERED that on the Court's own motion, the notice of appeal from the order dated September 17, 2009, is deemed a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

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

The plaintiff made a prima facie showing of its entitlement to judgment as a matter of

November 16, 2010

Page 1.

MARJAM SUPPLY COMPANY, INC. v
DRYWALL SURGEON SPECIALISTS, INC.

law by the submission, inter alia, of documentary evidence and the affidavit of the plaintiff's Corporate Administrator (*see Lebar Constr. Corp v HRH Constr. Corp.*, 292 AD2d 506). In opposition, the defendant Anthony Orlando (hereinafter the defendant) failed to raise a triable issue of fact (*see Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 384; *Beitner v Becker*, 34 AD3d 406, 408). The defendant's remaining contentions are either without merit or not properly before this Court (*see Pekich v James E. Lawrence, Inc.*, 38 AD3d 632, 633).

Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the defendant.

RIVERA, J.P., COVELLO, SANTUCCI and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court