

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

D31368
C/prt

_____AD3d_____

Argued - April 26, 2011

JOSEPH COVELLO, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-07025

DECISION & ORDER

William P. Henne, Jr., appellant, v
Maya Assurance Company, respondent.

(Index No. 17640/09)

Bondi Iovino & Fusco, Garden City, N.Y. (Paul Bartels of counsel), for appellant.

Ali & Bains, P.C., Forest Hills, N.Y. (Tejinder Bains of counsel), for respondent.

In an action, inter alia, to recover damages for breach of an employment contract, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (McCarty, III, J.), entered June 14, 2010, as denied his motion for summary judgment on the first cause of action to recover damages for breach of contract based on wrongful discharge and, upon searching the record, awarded summary judgment in favor of the defendant dismissing the first cause of action.

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

The plaintiff was hired by the defendant pursuant to an employment contract which provided, among other things, that the plaintiff would serve a 12-month probationary period. When the plaintiff's employment was terminated after nine months, he commenced this action alleging, among other things, that the defendant breached the employment contract.

Contrary to the plaintiff's contention, the employment contract unambiguously provided that he was a probationary employee at the time his employment was terminated. Accordingly, the Supreme Court properly denied his motion for summary judgment on the first cause

of action to recover damages for breach of contract based on wrongful discharge and, upon searching the record, properly awarded summary judgment in favor of the defendant dismissing the first cause of action (*see Sanford v Computing Group*, 5 AD3d 466, 467; *Cooyar v Tower Air*, 171 AD2d 640; *see also Matter of York v McGuire*, 63 NY2d 760, 761; *Supan v Michelfeld*, 97 AD2d 755, 756).

COVELLO, J.P., ENG, CHAMBERS and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court