

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

D31409
O/kmb

_____AD3d_____

Argued - April 29, 2011

WILLIAM F. MASTRO, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-02282

DECISION & ORDER

MPEG LA, LLC, respondent, v Audiovox Electronics Corporation, appellant, et al., defendant.

(Index No. 24678/08)

Winston & Strawn, LLP, New York, N.Y. (Michael S. Elkin of counsel), for appellant and defendant.

Sullivan & Cromwell, LLP, New York, N.Y. (Garrard R. Beeney and Adam R. Brebner of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant Audiovox Electronics Corporation appeals from an order of the Supreme Court, Suffolk County (Pines, J.), dated January 5, 2010, which denied its motion for summary judgment dismissing the first and second causes of action.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the defendant Audiovox Electronics Corporation (hereinafter the defendant) failed to meet its prima facie burden of demonstrating its entitlement to judgment as a matter of law on the first and second causes of action, which allege breach of contract (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *McMahan v McMahan*, 66 AD3d 970, 970-971). Since the defendant failed to meet its prima facie burden, we need not consider the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

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Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the first and second causes of action.

MASTRO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court