

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

D32463
Y/prt

_____AD3d_____

Submitted - September 20, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-07876
2011-09988

DECISION & ORDER

Anthony Vitale, et al., appellants, v
Edmund Rowland, Jr., etc., respondent,
et al., defendant.

(Index No. 26583/09)

Jeffrey Levitt, Massapequa, N.Y., for appellants.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal (1) from an order of the Supreme Court, Nassau County (Cozzens, Jr., J.), entered July 13, 2010, which, in effect, granted that branch of the motion of the defendant Edmund Rowland, Jr., which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him individually, and (2) as limited by their brief, from so much of an order of the same court entered December 29, 2010, as, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order entered July 13, 2010, is dismissed, as it was superseded by the order entered December 29, 2010, made upon reargument; and it is further,

ORDERED that the order entered December 29, 2010, is reversed insofar as appealed from, on the law, and, upon reargument, the determination in the order entered July 13, 2010, in effect, granting that branch of the motion of the defendant Edmund Rowland, Jr., which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him individually, is vacated, and that branch of the motion is denied; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

October 4, 2011

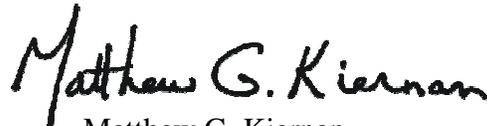
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“On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must determine, accepting as true the factual averments of the complaint and according the plaintiff the benefit of all favorable inferences, whether the plaintiff can succeed upon any reasonable view of the facts as stated” (*Schneider v Hand*, 296 AD2d 454, 454; *see Hill v Murphy*, 63 AD3d 680, 681). “Such a motion will fail if, from the four corners of the complaint, factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Country Pointe at Dix Hills Home Owners Assn., Inc. v Beechwood Org.*, 80 AD3d 643, 649; *see Guggenheimer v Ginzburg*, 43 NY2d 268, 275). Here, the complaint sets forth a cognizable cause of action sounding in breach of contract against the defendant Edmund Rowland, Jr., individually (*see McCarthy v Young*, 57 AD3d 955). Accordingly, at this pre-discovery stage, the Supreme Court erred, upon reargument, in adhering to its determination, in effect, granting that branch of the motion of the defendant Edmund Rowland, Jr., which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against him individually (*see Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38).

MASTRO, J.P., FLORIO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court