

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

D32889
H/prt

_____AD3d_____

Submitted - October 24, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-06881

DECISION & ORDER

David Cohen, et al., respondents, v
Georges Cohen, appellant.

(Index No. 23080/07)

Denkovich & Burshteyn, P.C., Plainview, N.Y. (Yuri Burshteyn of counsel), for
appellant.

In an action, inter alia, to recover damages for unjust enrichment, the defendant appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Queens County (Rosengarten, J.), entered June 9, 2010, as, upon a decision of the same court dated April 9, 2010, made after a nonjury trial, is in favor of the plaintiffs and against him on the cause of action to recover damages for unjust enrichment in the principal sum of \$42,998.

ORDERED that the judgment is modified, on the facts, by reducing the award from the principal sum of \$42,998 to the principal sum of \$27,296.88; as so modified, the judgment is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Queens County, for the entry of an appropriate amended judgment.

After a nonjury trial, this Court may render the judgment it finds warranted by the facts and a review of the record as a whole (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Intercounty Supply, Inc. v TAP Plumbing & Heating, Inc.*, 60 AD3d 907; *We're Assoc. Co. v Rodin Sportswear*, 288 AD2d 465; *Ancewicz v Western Suffolk BOCES*, 282 AD2d 632). In this case, the trial court miscalculated the damages to which the plaintiffs established entitlement. Upon review of the record, we find that the total damages awarded to the plaintiffs should be reduced from the principal sum of \$42,998 to the principal sum of

\$27,296.88.

The appellant's remaining contentions are not properly before this Court.

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court