

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

D33205
O/kmb

_____AD3d_____

Argued - November 10, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10252

DECISION & ORDER

Demetrios Bekas, appellant, v Efstathios Valiotis,
et al., respondents.

(Index No. 9318/10)

Mavromihalis Paradalis & Nohavicka, LLP, Astoria, N.Y. (Joseph D. Nohavicka of
counsel; Socrates Xanthopoulos on the brief), for appellant.

Renee Digrugilliers, Long Island City, N.Y., for respondents.

In an action, inter alia, to recover damages for fraudulent inducement, the plaintiff
appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County
(Grays, J.), dated September 22, 2010, as granted those branches of the defendants' motion which
were to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and those branches of the defendants' motion which were to dismiss the complaint pursuant to CPLR
3211(a)(1) and (7) are denied.

The Supreme Court erred in granting that branch of the defendants' motion which was
to dismiss the complaint pursuant to CPLR 3211(a)(1). The documentary evidence submitted by the
defendants did not utterly refute the plaintiff's allegations, conclusively establishing a defense as a
matter of law (*see Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326; *see also Fontanetta
v John Doe 1*, 73 AD3d 78, 86; *Morgenthau & Latham v Bank of New York Company, Inc.*, 305
AD2d 74; *Berger v Temple Beth-El of Great Neck*, 303 AD2d 346).

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Similarly, the Supreme Court erred in granting that branch of the defendants' motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7), as the plaintiff adequately pleaded a cause of action (*see Steve Elliot, LLC v Teplitsky*, 59 AD3d 523).

The parties' remaining contentions are without merit.

MASTRO, A.P.J., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court