

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

D34321
G/kmb

_____AD3d_____

Argued - February 16, 2012

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-01205

DECISION & ORDER

Jack Jaffa, et al., appellants, v Afrodiam, Ltd.,
et al., respondents.

(Index No. 6051/09)

Alan B. Hertz, P.C., Brooklyn, N.Y. (Debbie Z. Benasaraf of counsel), for appellants.

Koss & Schonfeld, LLP, New York, N.Y. (Simcha D. Schonfeld of counsel), for respondents.

In an action to recover damages for breach of an oral agreement, the plaintiffs appeal from an order of the Supreme Court, Kings County (Schack, J.), dated December 13, 2010, which granted the defendants' motion for summary judgment dismissing the amended complaint.

ORDERED that the order is affirmed, with costs.

In support of their motion for summary judgment dismissing the amended complaint, the defendants submitted evidence establishing that some of the purported loan amounts the plaintiffs were seeking to recover from them were investments for precious stones that the plaintiffs risked losing if, as happened, no profit was made, some amounts were never advanced to them, and some were fully repaid. Accordingly, the defendants established, prima facie, their entitlement to judgment as a matter of law dismissing the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562).

In opposition, the plaintiffs failed to raise a triable issue of fact. The affidavit of the plaintiff Jack Jaffa presented feigned issues of fact designed to avoid the consequences of his earlier deposition testimony (*see Hunt v Meyers*, 63 AD3d 685; *Colucci v AFC Constr.*, 54 AD3d 798, 799;

March 20, 2012

Page 1.

JAFFA v AFRODIAM, LTD.

Tejada v Jonas, 17 AD3d 448; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 616-617, *aff'd* 66 NY2d 701), the affidavit of the comptroller of the plaintiff Jack Jaffa & Associates Corp. was not based on personal knowledge of the facts or evidence in the record (*see Beaucejour v General Linen Supply & Laundry Co., Inc.*, 39 AD3d 444, 445; *Leslie v Splish Splash at Adventureland*, 1 AD3d 320, 321), and the remaining evidence submitted in opposition offered only vague, conclusory, and equivocal assertions regarding payments or terms of the purported loans (*see S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 342; *Mezger v Wyndham Homes, Inc.*, 81 AD3d 795, 796; *Alter v Levine*, 57 AD3d 923, 924; *Bachurski v Polish & Slavic Fed. Credit Union*, 33 AD3d 739, 740; *66 Henry St. Corp. v Harrison*, 256 AD2d 326).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the amended complaint.

SKELOS, J.P., BELEN, LOTT and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court