

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

D34740
Y/W/kmb

____AD3d____

Argued - February 14, 2012

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
JEFFREY A. COHEN, JJ.

2011-06035

DECISION & ORDER

Jerrold Rosen, etc., et al., respondents, v Charles
Sweed, appellant.

(Index No. 11663/08)

Rosenwasser Law, P.C., Montgomery, N.Y. (Moriah M. Niblack of counsel), for
appellant.

Blustein, Shapiro, Rich & Barone, LLP, Goshen, N.Y. (Raymond P. Raiche of
counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendant
appeals from an order of the Supreme Court, Orange County (McGuirk, J.), dated November 17,
2010, which denied his motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant failed to establish his prima facie entitlement to judgment as a matter
of law. Accordingly, the Supreme Court properly denied his motion for summary judgment
dismissing the complaint, regardless of the sufficiency of the plaintiffs' opposition papers (*see*
Winegrad v New York Univ. Med. Ctr., 64 NY2d 851).

The plaintiffs' remaining contention is without merit.

DILLON, J.P., ANGIOLILLO, FLORIO and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

September 19, 2012

ROSEN v SWEED