

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

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Submitted - May 18, 2012

RUTH C. BALKIN, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2011-03391

DECISION & ORDER

Richard Brown, appellant-respondent, v Susan
Berman, respondent-appellant.

(Index No. 12152/08)

Daniel E. Bertolino, P.C., Upper Nyack, N.Y., appellant-respondent.

Montalbano, Condon & Frank, P.C., New City, N.Y. (John E. Finnegan of counsel),
for respondent-appellant.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from so much of a judgment of the Supreme Court, Rockland County (Garvey, J.), dated February 16, 2011, as, after a nonjury trial, is in favor of the defendant and against him, in effect, dismissing so much of the complaint as alleged breach of contract and conversion of certain personal property, and the defendant cross-appeals, as limited by her notice of appeal and brief, from so much of the same judgment as is in favor of the plaintiff and against her dismissing her counterclaim to recover damages for structural damage to her home.

ORDERED that the judgment is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

In reviewing a trial court's findings of fact after a nonjury trial, this Court's authority is as broad as that of the Supreme Court and "includes the power to render the judgment [we] find [] warranted by the facts" (*McGuire v McGuire*, 93 AD3d 701, 703 [internal quotation marks omitted]). In reviewing the evidence, however, we must give "appropriate regard" to the decision of the trial judge, who was in a position to assess the credibility of the witnesses firsthand (*Bubba's Bagels of Wesley Hills, Inc. v Bergstol*, 18 AD3d 411, 412; see *Northern Westchester Professional*

Park Assoc. v Town of Bedford, 60 NY2d 492, 499; *McGuire v McGuire*, 93 AD3d at 703).

Here, based largely on its assessment of the credibility of the witnesses, the Supreme Court found that the parties did not have an oral contract entitling the plaintiff to repayment for the cost of a renovation project on the defendant's home. The Supreme Court also found, however, that the defendant was not entitled to recover on her counterclaim. The Supreme Court's determinations are supported by the record, and we find no basis to disturb them (*see Clinton Ave. Owners Corp. v Celestial Church of Christ, Ileri Oluwa Parish*, 94 AD3d 1033, 1034; *Marjam Supply Co., Inc. v All Craft Fabricators, Inc.*, 94 AD3d 954; *Hamilton v Blackwood*, 85 AD3d 1116).

The plaintiff's remaining contention is without merit.

BALKIN, J.P., ENG, LEVENTHAL and CHAMBERS, 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