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

D35734
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_____AD3d_____ Argued - March 30, 2012

PETER B. SKELOS, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2011-10100 DECISION & ORDER

Stewart Senter, etc., et al., respondents, v Craig Gitlitz, et al., appellants.

(Index No. 194111)

Dunington Bartholow & Miller, LLP, New York, N.Y. (Thomas V. Marino and Eva Adaszko of counsel), for appellants.

Rosenberg Calica & Birney, LLP, Garden City, N.Y. (Ronald J. Rosenberg and Lesley A. Reardon of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal from so much of an order of the Supreme Court, Nassau County (Bucaria, J.), dated September 7, 2011, as denied that branch of their motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants moved, inter alia, for summary judgment dismissing the plaintiff's breach of contract cause of action as time-barred. A breach of contract cause of action accrues, and the relevant six-year statute of limitations begins to run, at the time of the alleged breach (*see* CPLR 213[2]; *6D Farm Corp. v Carr,* 63 AD3d 903, 907). Here, the defendants failed to establish, prima facie, that the breach of contract cause of action, which alleged the failure to make certain dividend payments within the six-year period prior to commencement of the action, was time-barred (*see* CPLR 213[2]; *6D Farm Corp. v Carr,* 63 AD3d at 907). Accordingly, the Supreme Court properly denied that branch of the defendants' motion which was for summary judgment dismissing the breach of contract cause of action as time-barred.

The defendants also failed to demonstrate, prima facie, that the cause of action alleging breach of fiduciary duty was time-barred, since the alleged acts upon which the cause of action was predicated occurred in 2009, approximately two years prior to the commencement of the present action (*see* CPLR 213[1], 214[4]; *see generally Carbon Capital Mgt., LLC v American Express Co.,* 88 AD3d 933; *Wiesenthal v Wiesenthal,* 40 AD3d 1078, 1079-1080). Accordingly, the Supreme Court also properly denied that branch of the defendants' motion which was for summary judgment dismissing the cause of action alleging breach of fiduciary duty as time-barred.

The defendants' remaining contentions are without merit.

SKELOS, J.P., FLORIO, BELEN and SGROI, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court