SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 11-00572

PRESENT: SMITH, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ.

DEERE & COMPANY, PLAINTIFF-RESPONDENT,

V MEMORANDUM AND ORDER

M.P. JONES COMPANIES, INC., MELISSA A. HORNUNG AND RICHARD R. JONES, DEFENDANTS-APPELLANTS. (APPEAL NO. 1.)

GILLES R.R. ABITBOL, LIVERPOOL, FOR DEFENDANTS-APPELLANTS.

COSTELLO, COONEY & FEARON, PLLC, CAMILLUS (JENNIFER E. MATHEWS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (Anthony J. Paris, J.), entered November 22, 2010 in a breach of contract action. The order, among other things, granted plaintiff's motion for summary judgment and awarded plaintiff a money judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed with costs.

Memorandum: In these consolidated appeals arising from a breach of contract action, in appeal No. 1 defendants appeal from an order that, inter alia, struck their answers and counterclaims, granted plaintiff's motion for summary judgment, and awarded plaintiff a money judgment. In appeal No. 2, defendants appeal from an order awarding plaintiff a "judgment" of attorney's fees and costs incurred in obtaining the order in appeal No. 1. Contrary to the contention of defendants in appeal No. 1, Supreme Court properly declined to take judicial notice of their signatures in their verified pleadings to find a triable issue of fact sufficient to defeat plaintiff's motion for summary judgment. Plaintiff met its initial burden on the motion by submitting the contract and evidence establishing that defendants failed to make the payments required by its terms (*see Convenient Med. Care v Medical Bus. Assoc.*, 291 AD2d 617, 618). The court struck defendants' answers based upon their collective repeated failures to comply with the court's discovery orders. Thus, whether the contents of the answers might otherwise have raised an issue of fact to defeat the motion is not relevant.

We have considered defendants' remaining contentions with respect

to both appeals, and we conclude that they are without merit.

Entered: March 16, 2012

Frances E. Cafarell
Clerk of the Court