

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

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CA 09-02500

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

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LIEBEL & MERLE SALES, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

POLYMER CONVERSIONS, INC., DEFENDANT-RESPONDENT.

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GROSS, SHUMAN, BRIZDLE & GILFILLAN, P.C., BUFFALO (JOHN K. ROTTARIS OF COUNSEL), FOR PLAINTIFF-APPELLANT.

BLAIR & ROACH, LLP, TONAWANDA (J. MICHAEL LENNON OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (John M. Curran, J.), entered March 5, 2009 in a breach of contract action. The order, insofar as appealed from, denied the cross motion of plaintiff for partial summary judgment on the third and fourth causes of action.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs and the cross motion is granted in its entirety.

Memorandum: Plaintiff commenced this action seeking, inter alia, to recover unpaid commissions pursuant to a manufacturer's representative agreement. We conclude that Supreme Court erred in denying those parts of plaintiff's cross motion for partial summary judgment on liability with respect to the third cause of action, for earned commissions pursuant to Labor Law § 191-b, and the fourth cause of action, for attorney's fees, costs, disbursements and double damages pursuant to Labor Law § 191-c. Labor Law § 191-c (1) provides that, "[w]hen a contract between a principal and a sales representative is terminated, all earned commissions shall be paid within five business days after termination or within five business days after they become due in the case of earned commissions not due when the contract is terminated." "Pursuant to [section 191-c (3)], the prevailing party in an action to recover commissions earned pursuant to a contract between a principal and a sales representative 'shall be entitled to an award of reasonable attorney's fees, court costs, and disbursements,' as well as double damages" (*Zeman v Falconer Elecs., Inc.*, 55 AD3d 1240, 1242). Inasmuch as the court granted that part of the cross motion for partial summary judgment on liability with respect to the first cause of action, for breach of contract, i.e., failure to pay commissions due, the court should have also granted those parts of the cross motion for partial summary

judgment on liability with respect to the third and fourth causes of action. We therefore reverse the order insofar as appealed from and grant the cross motion in its entirety.

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court