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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 123 SSM 4  
433 Sutton Corp.  
Appellant,  
v.  
Robert Broder,  
Respondent.

Submitted by Robert I. Cantor, for appellant.  
Submitted by Jeffrey M. Steinitz, for respondent.

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules,  
order reversed, with costs, order of Supreme Court, New York  
County, reinstated, and certified question answered in the  
negative. The Appellate Division erred in determining that  
defendant was the prevailing party. Accordingly, defendant is  
not entitled to attorneys' fees. Chief Judge Lippman and Judges  
Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided April 1, 2014

