

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

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_____AD3d_____

Argued - May 20, 2008

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
HOWARD MILLER
MARK C. DILLON, JJ.

2007-05714

DECISION & ORDER

Gilbert Spector, et al., appellants, v Howard
Wendy, respondent.

(Index No. 23749/06)

Law Offices of Bart J. Eagle, PLLC, New York, N.Y., for appellants.

Davis & Gilbert LLP, New York, N.Y. (Paul F. Corcoran of counsel), for respondent.

In an action to recover an attorney's fee as provided under a guarantee, the plaintiffs appeal from an order of the Supreme Court, Westchester County (Rudolph, J.), dated May 15, 2007, which denied their motion for summary judgment on the complaint and granted the defendant's cross motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

While the plaintiffs failed to establish a prima facie showing of their entitlement to summary judgment on the complaint, the defendant met his burden of showing his entitlement to judgment as a matter of law dismissing the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The clear language of the subject guarantee limited the imposition of liability for an attorney's fee to "each Guarantor against whom this guarantee or any obligation or right hereunder is sought to be enforced, declared or adjudicated" (*cf. Famolaro v Crest Offset, Inc.*, 24 AD3d 604, 605), which did not include the defendant. In opposition to the defendant's prima facie showing, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324).

June 17, 2008

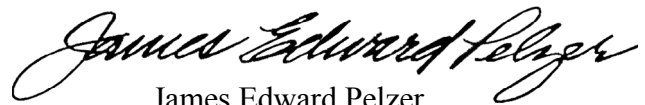
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The parties' remaining contentions are either without merit or not properly before the Court.

RIVERA, J.P., RITTER, MILLER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court