

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

D23982  
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Submitted - June 16, 2009

MARK C. DILLON, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

2008-08886

DECISION & ORDER

Glen B. Robbins, etc., respondent, v Edna  
Sendach, etc., appellant.

(Index No. 11717/05)

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Weinberg, Gross & Pergament, LLP, Garden City, N.Y. (Marc A. Pergament and  
Seth M. Choset of counsel), for appellant.

Stephen B. Schneer, LLC, New York, N.Y. (Judah S. Shapiro of counsel), for  
respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant  
appeals from a judgment of the Supreme Court, Nassau County (Warshawsky, J.), entered August  
21, 2008, which, upon a decision of the same court dated August 5, 2008, made after a nonjury trial  
on stipulated facts, is in favor of the plaintiff and against her in the principal sum of \$279,739.

ORDERED that the judgment is reversed, on the law, with costs, and the matter is  
remitted to the Supreme Court, Nassau County, for the entry of a judgment in favor of the defendant  
and against the plaintiff dismissing the complaint.

Pursuant to an agreement dated May 19, 1999 (hereinafter the agreement), the  
plaintiff's decedent agreed to "provide funds to Pacific Weavers, Inc." (hereinafter PWI), in the event  
that PWI was unable to pay its debt to "Chase Bank." The defendant's decedent, in turn, agreed to  
indemnify the plaintiff's decedent. However, instead of providing funds to PWI, the plaintiff's  
decedent purchased PWI's debt from Chase Bank and commenced an action against PWI and its  
other guarantors to recover the amount of the debt. Judgment was entered in favor of the plaintiff's

August 18, 2009

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decident against PWI and its other guarantors in the sum of \$494,953.24. Thereafter, only one of the other guarantors was released from liability, upon the payment of the sum of \$5,000.

The Supreme Court found that defendant's decident was obligated, pursuant to the agreement, to indemnify the plaintiff's decident, on the ground that the plaintiff's decident "eradicated" PWI's debt to Chase Bank. In reviewing a determination made after a nonjury trial, this Court's authority is as broad as that of the trial court, and this Court may render a judgment it finds warranted by the facts (*see Northern Westchester Professional Park Assoc, v Town of Bedford*, 60 NY2d 492, 499). Here, the plaintiff's decident did not eradicate PWI's debt to Chase Bank; rather, he transferred the debt instruments to himself, became PWI's creditor, and successfully sued to recover the debt. Under the circumstances, the defendant's decident had no obligation to indemnify the plaintiff's decident pursuant to the terms of the agreement.

The defendant's remaining contentions are without merit.

DILLON, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court