

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

**1529**

**CA 09-00519**

PRESENT: SCUDDER, P.J., FAHEY, CARNI, AND GORSKI, JJ.

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JAY N JEN, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

POLGE SEAFOOD DISTRIBUTING, INC.  
AND TIMOTHY J. POLGE, DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 2.)

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ALI, PAPPAS & COX, P.C., SYRACUSE (P. DOUGLAS DODD OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

GERMAIN & GERMAIN, LLP, SYRACUSE (JOHN J. MARZOCCHI OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Onondaga County (James P. Murphy, J.), entered January 12, 2009 in a breach of contract action. The order, insofar as appealed from, denied that part of plaintiff's motion for attorney's fees.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion is granted in part, attorney's fees are awarded to plaintiff, and the matter is remitted to Supreme Court, Onondaga County, for further proceedings in accordance with the same Memorandum as in *Jay N Jen, Inc. v Polge Seafood Distrib., Inc.* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Feb. 11, 2010]).

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court