

LEXSEE 824 N.Y.S.2D 923



Analysis
As of: Jan 31, 2007

[*1] **Ronald A. Baumann, et al., appellants, v Sedgwick Claims Management Services, Inc., respondents.**

2005-05231, (Index No. 26110-01)

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

2006 NY Slip Op 9539; 824 N.Y.S.2d 923; 2006 N.Y. App. Div. LEXIS 15190

December 19, 2006, Decided

NOTICE: [**1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING THE RELEASE OF THE FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

PRIOR HISTORY: *Baumann v. Sedgwick Claims Mgt. Servs., Inc.*, 10 Misc. 3d 1063A, 814 N.Y.S.2d 559, 2005 N.Y. Misc. LEXIS 2901 (2005)

COUNSEL: Hamburger, Maxson, Yaffe, Wishod, Knauer, & Rothberg, LLP, Melville, N.Y. (Richard Hamburger, Lane T. Maxson, and Jason Hsi of counsel), for appellants.

Anderson & Ochs, LLP, New York, N.Y. (Mitchell H. Ochs and Jason A. Stern of counsel), for respondents.

JUDGES: GABRIEL M. KRAUSMAN, J.P., REINALDO E. RIVERA, ROBERT A. SPOLZINO, ROBERT A. LIFSON, JJ. KRAUSMAN, J.P., RIVERA, SPOLZINO and LIFSON, JJ., concur.

OPINION:

DECISION & ORDER

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Emerson, J.), dated May 9, 2005, as granted that branch of the defendants' motion which was for summary judgment dismissing the first cause of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiffs failed either [**2] to tender consideration or to commit to writing the parties' oral modification of their existing service contract (*see General Obligations Law § 5-1103*). In opposition, the plaintiffs failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the first cause of action (*see Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923; *Zuckerman v City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595).

KRAUSMAN, J.P., RIVERA, SPOLZINO and LIFSON, JJ., concur. [*2]