

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 19, 2017

524199

MME. PIRIE'S, INC., et al.,
Respondents,

v

KETO VENTURES, LLC, et al.,
Appellants.

DECISION AND ORDER
ON MOTION

Motion for reargument.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted, without costs, and the memorandum and order of this Court decided and entered June 15, 2017 is amended by deleting the entire paragraph beginning on line 14 on page 5 of said memorandum and order and substituting the following:

Plaintiffs were also entitled to summary judgment dismissing defendants' counterclaim alleging breach of the purchase and sale agreement due to depletion of the shop's inventory. The agreement required plaintiffs to "operate the store in the normal course of business . . . until the time of closing" and "keep the inventory stocked in the normal course of business up to the date of the sale." Defendants submitted evidence indicating that plaintiffs were depleting and not replacing inventory in the months leading up to the closing, and plaintiffs submitted contrary evidence. Nevertheless, no question of material fact exists. What happened in the months prior to the closing was irrelevant in this regard because plaintiffs' obligations under the agreement did not arise until that agreement was executed, which occurred on the same date that the transaction closed. Hence, plaintiffs had no such contractual obligation in the months preceding the sale date. The record contains no evidence that any change in inventory occurred on the day of closing. Thus, Supreme Court did not err in granting plaintiffs summary judgment dismissing the counterclaim alleging breach of that contractual provision.

It is further

ORDERED that the memorandum and order of this Court decided and entered June 15, 2017 is amended by deleting the decretal paragraph of said memorandum and order and substituting the following:

ORDERED that the judgment is affirmed, with costs.

McCarthy, J.P., Egan Jr., Rose, Devine and Clark, JJ.,
concur.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court