

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

D25463  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 24, 2009

MARK C. DILLON, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
L. PRISCILLA HALL, JJ.

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2009-02430

DECISION & ORDER

Fragrancenet.com, Inc., appellant, v  
Fragrancex.com, Inc., et al., respondents.

(Index No. 156/08)

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Miller, Apfel & Curran, PLLC, Hauppauge, N.Y. (James P. Curran of counsel), for appellant.

Anthony M. Camisa, Mineola, N.Y. (Cameron Gilbert and Eric S. Crusius of counsel), for respondents.

In an action, inter alia, to recover damages for conversion, the plaintiff appeals from so much of an order of the Supreme Court, Suffolk County (Weber, J.), dated February 25, 2009, as, in effect, upon renewal, vacated so much of a prior order of the same court dated July 3, 2008, as denied that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the plaintiff's claim for punitive damages, and thereupon granted that branch of the motion.

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

Affording the complaint a liberal construction, accepting all facts as alleged in the complaint to be true, and according the plaintiff the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87-88; *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38), in effect, upon renewal, the Supreme Court properly, inter alia, granted that branch of the defendants' motion pursuant to CPLR 3211(a)(7) which was to dismiss the plaintiff's claim for punitive damages.

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“Punitive damages are permitted when the defendant’s wrongdoing is not simply intentional but ‘evinces a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply a criminal indifference to civil obligations’” (*Ross v Louise Wise Serv., Inc.*, 8 NY3d 478, 489, quoting *Walker v Sheldon*, 10 NY2d 401, 405; see *Prozeralik v Capital Cities Communications*, 82 NY2d 466, 479; *Sharapata v Town of Islip*, 56 NY2d 332, 335). Here, the allegations in the complaint do not support the imposition of punitive damages.

The plaintiff’s remaining contentions are without merit.

We decline the defendants’ request to impose sanctions upon the plaintiff (*see* 22 NYCRR 130-1.1; *Matter of Tiberie v Roelofsen*, 63 AD3d 851, 852).

DILLON, J.P., SANTUCCI, FLORIO and HALL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court