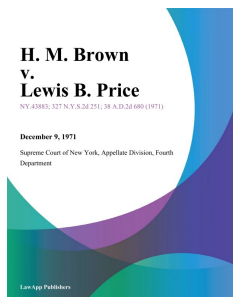


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Author: Supreme Court of New York

Realese Date: Expected @@expectedReleaseDate@@

Memorandum: Special Term incorrectly concluded that the plaintiff's complaint failed to state a cause of action. Motions to dismiss should not be granted unless it is clear that there can be no relief under any of the facts alleged in the complaint (Richardson v. Coy, 28 A.D.2d 640). Absent a showing of any prejudice, defects in form should be ignored (CPLR 3026; 3 Weinstein-Korn-Miller, N. Y. Prac., par. 3013.03). Our inquiry is limited to whether the pleading states in some recognizable form any cause of action known to our law (Foley v. D'Agostino, 21 A.D.2d 60). Viewed in that light, the complaint states causes of action for goods sold and services rendered (cf. CPLR Appendix of Official Forms, Form 6) and for an account stated (Schutz v. Morette, 146 N. Y. 137, 144; 8 Encyclopedia of New York Law, Contracts, ¶ 3007; 4 Carmody-Wait 2d, New York Practice, ¶ 29.241). This determination is without prejudice, however, to defendant's moving to have the causes of action for goods delivered and services rendered separately stated (CPLR 3014; CPLR 3024, subd. [a]; 3 Weinstein-Korn-Miller, N. Y. Prac., par. 3014.09). Disposition Order and judgment unanimously reversed, without costs, and motion to dismiss complaint denied.

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