

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 708502/2016

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NICHOLAS CONSTANTINE,

Plaintiff (s),

MEMORANDUM OF LAW

- against -

FOUR STAR AIR CONDITIONING CO., LLC
AND CHRISTINA IRAKLEOUS,

Defendant (s).

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MEMORANDUM OF LAW

The Defendants motion should be dismissed.

Deciding a motion to dismiss, the Court should accept the facts in the Complaint as true and give the Plaintiff's every benefit of the doubt. Plaintiff has submitted two exhibits (**Exhibit A** and **Exhibit B**) which clearly evidence the existence of a contract and the fact that the Defendant admits that payment has not been made. A motion to dismiss should be denied "If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied." *Rotuba Extruders v. Ceppos*, 46 NY2d 223, 231, 385 N.E. 2d 10868, 413 N.Y.S.2d 141 (1978).

The complaint should not be dismissed "Under CPLR 3211, (a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (see, e.g., *Heaney v Purdy*, 29 NY2d 157). [HN3] In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (*Rovello v Orofino Realty Co.*, supra, at 635) and "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one"