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## **Yankwitt LLP Prevails in First Department Appeal and Secures Dismissal of Case for its Hospitality Clients**

Yankwitt LLP successfully appealed the trial court's denial of its hospitality clients' motion for summary judgment in a breach of contract and unjust enrichment action, securing dismissal of the action in its entirety.

In its complaint, the plaintiff website operator alleged it had referred certain events to the defendants' restaurants and was not paid commissions on those events, which the plaintiff claimed were due to it under a supposed marketing agreement between the parties. After the case sat dormant for several years, Yankwitt LLP substituted in as counsel for the defendants and sought to move the case forward in discovery. When the plaintiff failed to appear for its court-ordered deposition, Yankwitt LLP successfully moved for sanctions precluding the plaintiff from testifying at trial because it "willfully and contumaciously" failed to appear for its deposition. Based on the preclusion order, Yankwitt LLP moved for summary judgment, arguing the plaintiff's complaint should be dismissed because it was precluded from testifying and would not be able to prove its claims for breach of contract and unjust enrichment through documentary evidence at trial. After the trial court denied summary judgment, Yankwitt LLP appealed to the Appellate Division, First Department, arguing the complaint should be dismissed based on the preclusion order.

A four-judge panel of the First Department unanimously agreed with the defendants. The panel, therefore, reversed the trial court's denial of summary judgment and granted the motion, thereby dismissing the case. The case is Funk This Entertainment LLC v. B.R. Guest LLC et al., Index No. 653152/13.