

**Protection Industries Corporation, Appellant, v. DDB Needham Worldwide, Inc.,
Respondent.**

3801, 3801A

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DE-
PARTMENT**

8 A.D.3d 185; 779 N.Y.S.2d 463; 2004 N.Y. App. Div. LEXIS 8867

June 24, 2004, Decided

June 24, 2004, Entered

PRIOR HISTORY: [***1]

Protection Indus. Corp. v. DDB Needham Worldwide, Inc., 306 A.D.2d 175, 763 N.Y.S.2d 546, 2003 N.Y. App. Div. LEXIS 7287 (N.Y. App. Div. 1st Dep't, 2003)

HEADNOTES

Pleading--Amendment.--Plaintiff should have been permitted to amend its complaint to add cause of action for conversion; court held that because plaintiff's equipment was originally on defendant's premises lawfully, plaintiff was required to demand return of equipment before conversion could occur; however, since plaintiff's claim was that inspection of defendant's premises revealed that much of equipment in issue had been destroyed or was missing, alleged wrongful taking at once created cause of action for conversion in favor of plaintiff, and no demand was necessary.

COUNSEL: Kirschenbaum & Kirschenbaum, P.C., Garden City (Frank N. Napoli of counsel), for appellant.

Davis & Gilbert LLP, New York (Patricia Hatry of counsel), for respondent.

JUDGES: Concur--Tom, J.P., Mazzaelli, Andrias, Ellerin and Lerner, JJ.

OPINION

[*185] [**464] Order, Supreme Court, New York County (Charles Edward Ramos, J.), entered May 8, 2003, which, to the extent appealed from, denied plaintiff's motion to amend its complaint to add a cause of action for conversion and for attorneys' fees, unanimously modified, on the law, to the extent of granting plaintiff's motion to amend its complaint to assert the sixth cause of action for conversion set forth in its proposed amended complaint, and otherwise affirmed, without costs. Appeal from order, same court and Justice, entered December 22, 2003, which denied plaintiff's motion denominated one to renew or reargue the court's prior order, unanimously dismissed, without costs, inasmuch as no appeal lies from the denial of a motion for reargument.

In denying plaintiff leave to add a cause of action for conversion, the motion court held that because plaintiff's [***2] equipment was originally on defendant's premises lawfully, plaintiff was required to demand the return of the equipment before a conversion could occur. However, since plaintiff's claim is that [*186] an inspection of defendant's premises revealed that much of the equipment in issue had been destroyed or was missing, the alleged wrongful taking at once created a cause of action for conversion in favor of plaintiff. "No demand was necessary" (*MacDonnell v Buffalo Loan, Trust & Safe Deposit Co., 193 N.Y. 92, 101, 85 N.E. 801 [1908]*).

Concur--Tom, J.P., Mazzaelli, Andrias, Ellerin and Lerner, JJ.