

40 A.D.3d 405

(Cite as: 40 A.D.3d 405, 836 N.Y.S.2d 139)

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Kaminer v. Wexler
40 A.D.3d 405, 836 N.Y.S.2d 139
NY,2007.

40 A.D.3d 405836 N.Y.S.2d 139, 2007 WL
1438781, 2007 N.Y. Slip Op. 04229

Debbie Kaminer, Appellant
v
Aaron Wexler et al., Respondents.
Supreme Court, Appellate Division, First Depart-
ment, New York

May 17, 2007

CITE TITLE AS: Kaminer v Wexler

HEADNOTE

Frauds, Statute of
Agreement Not to be Performed within One Year

Plaintiff's claim for compensation for introducing her cousin to investor required writing, since compensation sought was not in nature of finder's fee, and alleged agreement pursuant to which compensation was to be paid was not capable of performance within one year.

Thomas Furst, Great Neck, for appellant.
Debbie Kaminer, Great Neck, appellant pro se.
Moritt Hock Hamroff & Horowitz LLP, Garden City (Robert M. Tils of counsel), for Aaron Wexler, 21131 LLC, West 111 LLC and Northside Development LLC, respondents.

Ginsburg & Misk, Queens Village (Hal R. Ginsburg of counsel), for Rick Kaminer and Teletracer Mid-Atlantic Corp., respondents.

Judgment, Supreme Court, New York County (Herman Cahn, J.), entered April 21, 2006, dismissing the complaint and bringing up for review an order, same court and Justice, entered April 7, 2006, granting defendants' motion pursuant to [CPLR 3211](#), unanimously affirmed, with costs. Appeal from

the April 7, 2006 order unanimously dismissed, without costs, as subsumed in the appeal from the ensuing judgment. Appeal from order, same court and Justice, entered October 23, 2006, which denied reargument, unanimously dismissed, without costs, as unappealable.

The court properly found that plaintiff's claim for compensation for introducing her cousin to an investor required a writing, since the compensation sought was not in the nature of a finder's fee (*see Northeast Gen. Corp. v Wellington Adv.*, 82 NY2d 158, 162 [1993]), and the alleged agreement pursuant to which compensation was to be paid was not capable of performance within one year (*cf. Nakamura v Fujii*, 253 AD2d 387 [1998]). The notated checks adduced by plaintiff do not constitute a writing sufficient to establish a contractual relationship between the parties (*see General Obligations Law § 5-701*; *cf. Crabtree v Elizabeth Arden Sales Corp.*, 305 NY 48, 56 [1953]).

The court properly dismissed plaintiff's remaining claims, since the requirement of a writing may not be circumvented by recasting the action as one seeking damages in tort (*see *406J.E. Capital v Karp Family Assoc.*, 285 AD2d 361, 362 [2001]). In any event, the tort claims were merely duplicative of the breach of contract cause of action (*see Brown v Brown*, 12 AD3d 176 [2004]). The slander claim was subject to dismissal for the additional reason that it lacked the requisite specificity (*see Vardi v Mutual Life Ins. Co. of N.Y.*, 136 AD2d 453, 456 [1988]).**2

The court properly found that plaintiff's motion, though denominated as one to vacate pursuant to [CPLR 5015 \(a\) \(3\)](#), was one for reargument, since it merely reiterated previously raised arguments, and presented no new material evidence. The denial of reargument is not appealable.

We have considered the plaintiff's remaining contentions and find them unavailing. Concur-Andrias,

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J.P., Buckley, Catterson, Malone and Kavanagh, JJ.

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NY,2007.

Kaminer v Wexler

40 A.D.3d 405

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