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Supreme Court, Appellate Division, First Department, New York.

Robert WIDOM, Plaintiff,  
 Refuah Research, Inc., Plaintiff-Appellant,

v.

Maida MITTMAN, Individually, Defendant-Respondent,

Maida Mittman, as Executrix, etc., et al., Defendants.

April 19, 2007.

**Background:** Putative donee brought suit against estate and others to, inter alia, enforce gift. The Supreme Court, New York County, [Jane S. Solomon, J.](#), dismissed cause of action, and putative donee appealed.

**Holdings:** The Supreme Court, Appellate Division, held that:


- (1) document did not establish present donative intent, and
  - (2) delivery did not occur, as required for gift.
- Affirmed.

West Headnotes

**[1] Gifts** 

[191k4 Most Cited Cases](#)

Elements necessary for an effective gift are: (1) an intent on the part of the donor to make a present transfer; (2) delivery of the gift, either actual or constructive, to the donee; and (3) acceptance by the donee.

**[2] Gifts** 

[191k15 Most Cited Cases](#)

Document which referred to putative donor's anticipated "investment" did not establish intent to make present transfer, as required for gift, where document merely anticipated delivery of proceeds of a real property sale that had not yet occurred.

**[3] Gifts** 

[191k18\(2\) Most Cited Cases](#)

Document that anticipated that putative donor would make an "investment" from the proceeds of an upcoming real estate sale was insufficient to show a delivery, as required element for a gift, where donor did not possess, much less relinquish control over, the proceeds at the time of the purported gifting.

**\*502** Rosen Slome Marder LLP, Uniondale ( [Lon J. Seidman](#) of counsel), for appellant.

Moritt Hock Hamroff & Horowitz LLP, Garden City ( [Michael S. Re](#) of counsel), for respondent.

[ANDRIAS, J.P.](#), [SAXE](#), [NARDELLI](#), [WILLIAMS](#), [CATTERSON](#), JJ.

Order, Supreme Court, New York County (Jane S. Solomon, J.), entered November 17, 2006, which, to the extent appealed from as limited by the briefs, granted defendants' motion pursuant to [CPLR 3211](#) to dismiss the fourth cause of action, unanimously affirmed, with costs.

[\[1\]\[2\]\[3\]](#) The elements necessary for an effective gift are: (1) an intent on the part **\*503** of the donor to make a present transfer; (2) delivery of the gift, either actual or constructive, to the donee; and (3) acceptance by the donee (see [Rubenstein v. Rosenthal](#), 140 A.D.2d 156, 158, 528 N.Y.S.2d 539 [1988] ). As to donative intent, the August 2005 agreement refers simply to "anticipation" of Mittman's "investment." It further notes that the \$750,000 "will be" derived from proceeds of the sale of real property, not to take place until November of that year. Accordingly, there was no present transfer by virtue of the written agreement, nor was there an accepted delivery. Mittman was not yet in possession of the money to be gifted, and her receipt of such moneys was dependent on the culmination of a future transaction, with delivery anticipated only after the closing. Given the absence of a present donative intent and the fact that Mittman did not yet possess, much less relinquish control over, the money at the time of the purported gifting,

Refuah Research cannot establish its fourth cause of action (*see* [Lichtenstein v. Eljohman, 161 A.D.2d 397, 555 N.Y.S.2d 331 \[1990\]](#)).

39 A.D.3d 374, 833 N.Y.S.2d 502, 2007 N.Y. Slip Op. 03356

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