

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - September 22, 2006

ROBERT W. SCHMIDT, J.P.  
THOMAS A. ADAMS  
MARK C. DILLON  
JOSEPH COVELLO, JJ.

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2005-03148

DECISION & ORDER

Michael J. Motelson, appellant, v Candon  
Court Homeowners Association, Inc., respondent.

(Index No. 19838/02)

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Michael J. Motelson, Great Neck, N.Y., appellant pro se.

Howard M. File, P.C., Staten Island, N.Y. (Remy Larson of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Martin, J.), dated February 25, 2005, as, upon reargument, adhered to a prior determination in an order of the same court dated September 23, 2004, granting the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the appeal is dismissed, with costs.

All of the issues raised on this appeal could have been raised on the plaintiff's prior appeal from the order dated September 23, 2004, granting the defendant's motion for summary judgment dismissing the complaint, which appeal was dismissed by this court on July 7, 2005, for failure to prosecute. The dismissal of that appeal constituted an adjudication on the merits with respect to all issues that could have been raised and we decline to consider those issues on this appeal (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750; *Bray v Cox*, 38 NY2d 350; *Hepner v New York City Tr. Auth.*, 27 AD3d 418; *Lang v Dachs*, 22 AD3d 468; *Tri-State Sol-Aire Corp. v Martin Assoc.*, 7 AD3d 514).

SCHMIDT, J.P., ADAMS, DILLON and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

November 14, 2006

MOTELSON v CANDON COURT HOMEOWNERS ASSOCIATION, INC.