

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

D13458  
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Argued - November 16, 2006

WILLIAM F. MASTRO, J.P.  
ROBERT A. SPOLZINO  
ANITA R. FLORIO  
PETER B. SKELOS, JJ.

2006-00064

DECISION & ORDER

Richard J. Timoney, appellant, v Newmark &  
Company Real Estate, Inc., respondent.

(Index No. 010640/05)

Richard A. Altman, New York, N.Y., for appellant.

M. Teresa Daley, New York, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Nassau County (Martin, J.), entered November 28, 2005, which granted the defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(5) on the ground of res judicata and denied his cross motion for leave to enter a default judgment against the defendant.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the defendant's motion to dismiss the complaint as barred by the doctrine of res judicata. In 1999, the plaintiff commenced an action against the defendant in the Supreme Court, New York County, alleging that the defendant failed to pay him a commission or fee to which he was entitled under a purported 1996 agreement. That action was dismissed in 2001, and such dismissal was affirmed on appeal. The Supreme Court, New York County, denied the plaintiff's subsequent motion for leave to renew, and the appeal from that order was dismissed. The plaintiff may not relitigate claims arising from the same transaction or series of transactions, notwithstanding his attempts to allege new facts or theories of recovery (*see Sosa v JP Morgan Chase Bank*, 33 AD3d 609; *Goldstein v Massachusetts Mut. Life Ins. Co.*, 32 AD3d 821; *Dinger v Kling Agency*, 237 AD2d 326, 327).

January 16, 2007

TIMONEY v NEWMARK & COMPANY REAL ESTATE, INC.

Page 1.

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:

James Edward Pelzer  
Clerk of the Court

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.