

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

D13835  
Y/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 10, 2006

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
MARK C. DILLON, JJ.

2005-06337

DECISION & ORDER

Earl Jones, appellant-respondent, v  
Alberta R. James, respondent-appellant.

(Index No. 430/05)

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Peter C. Alexanderson, Brewster, N.Y., for appellant-respondent.

Whalen & Whalen, Dover Plains, N.Y. (Thomas J. Whalen of counsel), for  
respondent-appellant.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from so much of an order of the Supreme Court, Dutchess County (Dolan, J.), dated May 24, 2005, as granted that branch of the defendant's motion which was to dismiss the first cause of action, and the defendant cross-appeals from so much of the same order as denied those branches of her motion which were to dismiss the second, third, and fourth causes of action.

ORDERED that the order is affirmed, without costs or disbursements.

The statute of frauds provides, inter alia, that "[a]n . . . interest in real property . . . cannot be created, granted, assigned, surrendered or declared, unless . . . by a . . . deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same" (General Obligations Law § 5-703[1]). Here, because the complaint alleged, inter alia, that the defendant agreed to convey to the plaintiff, at some point in the future, half the interest in the subject real property, and because there was no deed or conveyance in writing regarding the proposed conveyance, the Supreme Court properly dismissed the plaintiff's first cause of action for breach of contract as barred by the statute of frauds (*see Lowinger v Lowinger*, 287 AD2d 39, 44-45).

February 13, 2007

Page 1.

JONES v JAMES

The Supreme Court properly denied those branches of the defendant's motion which were to dismiss the third and fourth causes of action to recover damages for fraud and conversion, respectively. The third cause of action adequately alleged a cause of action sounding in fraud (*cf. Watson v Pascal*, 27 AD3d 459). As to the fourth cause of action, it sufficiently alleged facts that the defendant had title, possession, or control over money or property allegedly converted (*cf. Old Republic Nat. Title Ins. Co. v Cardinal Abstract Corp.*, 14 AD3d 678, 680).

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court