

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

D14187  
Y/cb

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

Argued - February 1, 2007

FRED T. SANTUCCI, J.P.  
GLORIA GOLDSTEIN  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2005-02370  
2005-04367  
2005-10581

DECISION & ORDER

Susan G. Naversen, etc., respondent, v George E.  
Gaillard, et al., appellants.

(Index No. 3099/04)

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Meiselman, Denlea, Packman, Carton & Eberz, P.C., White Plains, N.Y. (David S. Douglas and Jeff Carton of counsel), for appellants.

Mitchell & Incantalupo, Forest Hills, N.Y. (Thomas V. Incantalupo and Carlos Guevara of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal from (1) an order of the Supreme Court, Orange County (McGuirk, J.), dated January 11, 2005, which granted the plaintiff's motion for summary judgment, (2) so much of an order of same court dated March 24, 2005, as denied their motion for leave to reargue, and (3) a judgment of the same court entered August 4, 2005, which, upon the order dated January 11, 2005, is in favor of the plaintiff and against them in the principal sum of \$263,232.

ORDERED that the appeals from the orders are dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

March 6, 2007

NAVERSEN v GAILLARD

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The appeal from the intermediate order dated January 11, 2005, must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from that order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[c]). The appeal from the order dated March 24, 2005, must be dismissed because no appeal lies from an order denying a motion for leave to reargue (*see Fryar v First Student*, 21 AD3d 525).

On the plaintiff's motion for summary judgment, she established, *prima facie*, her entitlement to judgment as a matter of law, and the defendants failed to raise a triable issue of fact in opposition. The Supreme Court properly determined that since the defendants were not beneficiaries of the G. Everett Gaillard Revocable Trust, they lacked standing to challenge the actions of the plaintiff as its trustee (*see Matter of McManus*, 47 NY2d 717; *Cashman v Petrie*, 14 NY2d 426, 430; *cf. Zeff v Weissman*, 209 AD2d 612, 613).

The defendants' remaining contentions are without merit.

SANTUCCI, J.P., GOLDSTEIN, CARNI and McCARTHY, JJ., concur.

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2005-02370  
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DECISION & ORDER ON MOTION

Susan G. Naversen, etc., respondent, v George E.  
Gaillard, et al., appellants.

(Index No. 3099/04)

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Motion by the respondent on appeals from two orders of the Supreme Court, Orange County, dated January 11, 2005, and March 24, 2005, respectively, and a judgment of the same court entered August 4, 2005, to dismiss the appeal from the order dated March 24, 2005, on the ground that no appeal lies from an order denying reargument. By decision and order on motion of this court dated November 9, 2005, the motion was held in abeyance and referred to the Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeals, it is

ORDERED that the motion is denied as academic in light of our determination on the appeals (*see Naversen v Gaillard*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]).

SANTUCCI, J.P., GOLDSTEIN, CARNI and McCARTHY, 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