

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

D16856  
W/hu

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Argued - October 22, 2007

STEPHEN G. CRANE, J.P.  
GLORIA GOLDSTEIN  
ANITA R. FLORIO  
MARK C. DILLON, JJ.

2006-08774

DECISION & ORDER

Ruvyn Itskovich, appellant, v David Loshak,  
et al., respondents.

(Index No. 32808/05)

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John J. D’Emic, Brooklyn, N.Y. (Patrick Gatti of counsel), for appellant.

Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP, Lake  
Success, N.Y. (Keith J. Singer of counsel), for respondent David Loshak.

Denkovich & Burshteyn, P.C., Plainview, N.Y. (Michael R. Denkovich of counsel),  
for respondent Simon Greenbaum.

In an action to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Kings County (Pfau, J.), dated July 25, 2006, which granted the defendants’ separate cross motions to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211(a)(5) and (7).

ORDERED that the order is affirmed, with one bill of costs.

The Supreme Court properly granted those branches of the defendants’ separate cross motions which were to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211(a)(5). Enforcement of the alleged oral agreement between the parties is barred by the statute of frauds because that alleged oral agreement was not capable of being performed within one year (*see* General Obligations Law § 5-701[a][1]). Moreover, the plaintiff failed to demonstrate that, pursuant to the doctrine of promissory estoppel, the defendants should be precluded from invoking

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the statute of frauds (*see Yedvarb v Yedvarb*, 237 AD2d 433, 434; *WE Transp. v Suffolk Transp. Serv.*, 192 AD2d 601, 602; *Carvel Corp. v Nicolini*, 144 AD2d 611, 612-613; *D & N Boening v Kirsch Beverages*, 99 AD2d 522, 524, *affd* 63 NY2d 449; *cf. American Bartenders School v 105 Madison Co.*, 59 NY2d 716, 718).

In light of the foregoing, we need not address the defendants' remaining contentions.

CRANE, J.P., GOLDSTEIN, FLORIO 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