

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

D23236  
G/kmg

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Submitted - April 6, 2009

WILLIAM F. MASTRO, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
LEONARD B. AUSTIN, JJ.

2008-02763

DECISION & ORDER

Xi Fang Temple, appellant, v  
Hopetel, LLC, et al., respondents.

(Index No. 28002/03)

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Sweeney, Gallo, Reich & Bolz, LLP, Rego Park, N.Y. (Michael H. Reich of counsel),  
for appellant.

In an action, inter alia, to compel specific performance of a contract for the sale of real property, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (O'Donoghue, J.), entered February 25, 2008, as, in effect, upon reargument, adhered to a prior determination in an order and judgment (one paper) entered March 22, 2006, among other things, granting the defendants' cross motion, in effect, for summary judgment dismissing the second amended complaint.

ORDERED that the appeal is dismissed, without costs or disbursements.

As a general matter, this Court does not consider any issue raised on a subsequent appeal that was raised, or could have been raised, in an earlier appeal that was dismissed for lack of prosecution, although the Court has the inherent jurisdiction to do so (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750, 756; *Bray v Cox*, 38 NY2d 350, 353; *Matter of City of New York, S. Jamaica I Urban Renewal Area*, 41 AD3d 595). Here, the plaintiff previously appealed from the order and judgment entered March 22, 2006, in which the Supreme Court determined, inter alia, that the agreement between the parties did not satisfy the statute of frauds and, therefore, was not enforceable as a real estate sales contract, and dismissed the second amended complaint. That appeal was dismissed for failure to prosecute by decision and order on motion of this Court dated August

May 19, 2009

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13, 2007. The dismissal of that appeal constituted an adjudication on the merits with respect to all issues regarding the agreement that could have been reviewed therein, and there is no basis to review the same issues on this appeal (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d at 756; *Matter of Talt v Murphy*, 35 AD3d 486; *Motelson v Candon Ct. Homeowners Assn., Inc.*, 34 AD3d 543, 543-544). Accordingly, we dismiss the plaintiff's current appeal.

MASTRO, J.P., COVELLO, BALKIN and AUSTIN, 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