

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

D29885
G/prt

_____AD3d_____

Argued - January 13, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2010-00611

DECISION & ORDER

Dong Won Kim, appellant, v Frank H. Truck
Corporation, et al., respondents.

(Index No. 3506/08)

Meyer, Suozzi, English & Klein, P.C., Garden City, N.Y. (Robert N. Zausmer of
counsel), for appellant.

Richard Yoon (Malvina Nathanson, New York, N.Y., of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from so much of a judgment of the Supreme Court, Queens County (Kitzes, J.), entered December 18, 2009, as, upon the granting of the defendants' motion pursuant to CPLR 4401 for a judgment as a matter of law, made at the close of the plaintiff's case, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly dismissed his cause of action alleging breach of contract. The parole evidence rule precluded the plaintiff from introducing evidence of an alleged oral agreement, which allegedly contradicted and varied the terms of the parties' subsequent written contract (*see Harris v Hallberg*, 36 AD3d 857).

February 1, 2011

DONG WON KIM v FRANK H. TRUCK CORPORATION

Page 1.

The plaintiff's remaining contentions are without merit.

FLORIO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court