

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

D33870  
O/prt

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Submitted - January 17, 2012

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
PLUMMER E. LOTT, JJ.

2011-05181

DECISION & ORDER

Jane Hauck, et al., appellants, v Lillian Lombardo,  
etc., respondent, et al., defendant.

(Index No. 6552/09)

Stephen A. Harrison, Brooklyn, N.Y., for appellants.

Alston & Bird, LLP, New York, N.Y. (Michael E. Johnson, Leticia B. Vandehaar,  
and Jalina J. Hudson of counsel), for respondent.

In an action, inter alia, to recover damages for breach of an oral agreement, the plaintiffs appeal from so much of an order of the Supreme Court, Kings County (Vaughan, J.), dated March 31, 2011, as, in effect, granted that branch of the motion of the defendant Lillian Lombardo, individually and as executrix of the estate of Sylvester Kuchynskas, which was pursuant to CPLR 3211(a)(7) to dismiss the first cause of action insofar as asserted against her.

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

The complaint alleged that the decedent, Sylvester Kuchynskas, and the plaintiff Jane Hauck (hereinafter Hauck) entered into an oral agreement in which the decedent agreed to make a testamentary disposition to Hauck in exchange for certain nursing services performed by the plaintiffs during the decedent's lifetime. The first cause of action sought to recover damages for breach of the oral agreement.

Contrary to the plaintiffs' contention, the Supreme Court properly, in effect, granted that branch of the motion of the defendant Lillian Lombardo, individually and as executrix of the

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estate of Sylvester Kuchynskas, which was pursuant to CPLR 3211(a)(7) to dismiss the first cause of action insofar as asserted against her. An agreement to make a testamentary disposition of any kind must be in writing and signed by the party to be charged (*see* EPTL 13-2.1[a][2]). Since the complaint did not allege the existence of an enforceable written agreement between the decedent and Hauck, the plaintiffs' allegation that there was a breach of an oral agreement fails to state a cause of action (*see* EPTL 13-2.1[a][2]; *Dombrowski v Somers*, 41 NY2d 858, 859; *Matter of Morse*, 1 AD3d 516, 517; *Matter of Urdang*, 304 AD2d 586, 587).

DILLON, J.P., LEVENTHAL, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court