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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 177 SSM 17  
James V. Aquavella, &c., et al.,  
Appellants,  
v.  
Ralph S. Viola, &c.,  
Respondent.

Submitted by Robert B. Calihan, for appellants.  
Submitted by J. Wood, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed,  
with costs.

The Appellate Division correctly determined that the  
proffered writings failed to satisfy the statute of frauds

(see General Obligations Law § 5-701[a][1]). The writings, taken together, fail to contain all of the essential terms of the alleged agreement. Specifically, the writings make no mention of the alleged incorporation of the written agreement's noncompete clause into the subsequent oral agreement between the parties.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 7, 2011