[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Cahn PART 49

Index Number : 601545/2007
GREENE, EUGENE
VS.
RATNER, BRUCE
SEQUENCE NUMBER : 001
DISMISS COMPLAINT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED
JUL 23 2008
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE . . . . .

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/22/08

Hon. Cahn
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

----------X

EUGENE GREENE,

Plaintiff,

-against-

Index No. 601545/07

BRUCE RATNER, FOREST CITY RATNER COMPANIES, FCR SPORTS, LLC and BROOKLYN BASKETBALL, LLC,

Defendants.

----------X

CAHN, J.:

Plaintiff Eugene Greene brings this action to recover the fair and reasonable value of his services in finding investors and raising funds for defendants' purchase of the New Jersey Nets National Basketball Association franchise (the Nets or Team) and development of the Atlantic Yards Real Estate Development Project in Brooklyn, New York (the Atlantic Yards project).

Defendants move to dismiss the complaint, CPLR 3211 (a) (1), (5) and (7).

BACKGROUND

The complaint contains allegations that Greene is a successful businessman and entrepreneur with many years of investing and business experience. Over the years, he has established, and continues to maintain, an extensive network of business and financial relationships.

Defendant Bruce Ratner is the president and Chief Executive Officer of defendant Forest City Ratner Companies (Forest City), a real estate development and investment firm. Forest City is the parent company of defendants FCR Sports, LLC and Brooklyn Basketball, LLC, two holding companies through which Ratner allegedly directs his investments in the Nets franchise and the Atlantic Yards project.

Greene alleges that he was first introduced to Ratner in September of 2003, by a mutual friend who knew that Greene was interested in becoming an owner and participant in the operation of a National Basketball Association (NBA) team and that Ratner was seeking to raise money to purchase the Nets and develop the Atlantic Yards project. Upon their introduction, Ratner allegedly explained to Greene that he was in the midst of bidding on the Nets and developing the Atlantic Yards project and was seeking to raise money from outside investors for both projects. Ratner allegedly solicited Greene's involvement in this endeavor, knowing that Greene: was experienced in raising funds; had extensive business contacts, including significant contacts with the Net's then-existing investors; and was well connected to other high-net-worth individuals who might be interested in investing in defendants' contemplated business ventures.

In order to induce Greene to invest in and use his contacts and fund-raising ability for the benefit of these projects, Ratner allegedly made Greene a series of promises and representations of ever-increasing prerequisites. Specifically, Greene alleges that Ratner promised that he "would be a key person in running the Team" (Compl., ¶ 17), and that he would be given preferred investment status and would become a member of the Team's three-person Board of Governors (id., ¶ 22).

Greene alleges that, as a quid pro quo for these promises and inducements, in November 2003, Ratner demanded that Greene execute and fund a subscription agreement by which Greene would invest a total of 6,000,000 in the Nets and Atlantic Yards projects. The documentary evidence reflects that a subscription agreement was executed by EG Group LLC, a Greene Entity, and Brooklyn Basketball, a Ratner entity, on November 7, 2003 (see Greene Aff., Exh. B).

Greene alleges that, since he "at all times, sought an active participatory role in the

management and affairs of the Team, . . . [he] conditioned his investment accordingly" (Compl., ¶ 31). Thus, at Greene's insistence, EG Group was provided with an additional letter agreement signed by Brooklyn Basketball (the Benefits Letter), promising that a member of EG Group would serve as a member on several boards associated with the Team (id., ¶ 32). Specifically, the Benefits Letter, captioned "Governance Terms relating to Brooklyn Basketball, LLC," and also executed on November 7, 2003, provides that:

> [t]his is to confirm our understanding with respect to certain governance terms of Brooklyn Basketball, LLC or whichever entity acquires the New Jersey Nets National Basketball Association franchise and related assets (the "Company") as well as your role on behalf of the Company. We have agreed to include in the final operating agreement of the Company provisions for the right of EG Group LLC to (i) designate a member to the Board of Directors or Managers of the Company; (ii) designate a member to the Basketball Operations Committee of the Company; and (iii) designate an alternate governor representing the Nets Basketball franchise on the NBA Board of Governors

(Compl., ¶ 33; Greene Aff., Exh. A). Greene alleges that

> [his] agreement to fund and assist Ratner was conditioned upon Ratner's providing to Greene the November 7, 2003 letter and, in addition thereto, appointing Greene to the Team's Board of Governors, which appointment would expand Greene's business and financial contacts and would enable Greene to interact with other high-worth investors, a position that held out for Greene the opportunity for further and ever-increasing business and financial gain

(Compl., ¶ 34).

Following presentment of the Benefits Letter, Greene alleges that he was pressured continuously by Ratner and his representatives to continue his fund-raising efforts for the Nets and the Atlantic Yards project. To further induce him to provide these services, Ratner at various

times promised Greene that "[y]ou will be the glue that helps run this team" (id., ¶ 39), and that "[y]ou are going to be on the highest level committee with me" (id., at ¶ 40). Greene alleges that, based on these repeated promises and inducements, he had a reasonable expectation that he would be well compensated for his efforts and engaged in "round the clock" efforts to solicit investors (id., ¶ 41).

The complaint contains allegations that, between September 2003 and May 2006, Greene solicited potential investors to consider investing in the Team and Atlantic Yards project, eventually raising over $31,000,000.[1] Greene further alleges that his activities for defendants were not limited to fund-raising, but that he also

> worked with and amongst the various disparate sellers of the Team in an effort to secure a universal acceptance of Ratner as a buyer of the Team, to promote Ratner and influence sellers, who were holdouts in a proposed sale of the benefits that a sale to Ratner would bring

(id., ¶ 46). In addition, Greene alleges that he arranged a meeting between Ratner and David Gerstein, a close friend of Greene's, who represented a group of investors and was, himself, a significant investor and former majority owner of the Team. Ratner allegedly confirmed to Gerstein that Greene would "have a key role in the Team's organization" (id., ¶ 48). Finally, Greene alleges that, at Ratner's request, he went to Philadelphia to meet with Lewis Katz, the Nets's then-primary owner, to assist Ratner in his efforts to convince Katz to sell the Team to Ratner (id.,¶¶ 49-50).[2]

---

[1] According to the complaint, Greene raised this money as follows: $11,100,000 from Longwing Brooklyn Real Estate Partners, LLC, and $20,000,000 from 50 Hoops, LLC (id., ¶ 53).

[2] Although not alleged in the complaint, the Court takes judicial note of the fact that Ratner ultimately succeeded in purchasing the Nets for $300,000,000 in January of 2004, an event that received extensive media coverage in New York City.

However, when the members of the Net's Board of Governors were announced at the end of 2004, Greene was not among them (id., ¶ 56). At that time, Greene alleges, he also realized that Ratner was not going to properly compensate him for his efforts in raising funds (id., ¶ 60).[3]

Greene alleges that, through May of 2006, he approached a variety of senior executives in Ratner's organization, attempting to review what had occurred (id., ¶ 63). In the Spring of 2006, Greene approached Sadie Mitnick, a senior vice president of Forest Ratner, who allegedly acknowledged that Greene should have been taken care of for his efforts, and promised that if Greene produced potential investors, defendants would pay Greene a finder's fee, as they had done with others (id., ¶ 64). Thereafter, Greene's counsel allegedly made a written demand on Ratner; however, Ratner has so far refused to compensate Greene for his efforts (id., ¶ 66).

Greene commenced the instant action, seeking the claimed fair and reasonable value of his services. The complaint contains causes of action for breach of implied contract (first), promissory estoppel (second), quantum meruit (third), and money had and received (sixth). Damages for "financial damages" are also sought in causes of action for fraudulent inducement (fourth) and breach of the covenant of good faith and fair dealing (fifth). Separately, plaintiff demands an award of punitive damages.

Defendants now move to dismiss the complaint on the ground that the alleged oral agreement, upon which Greene seeks to recover finder's fees, runs afoul of the statute of frauds (General Obligations Law § 5-701 [a] [10]). They argue that dismissal of the contract-based and fraudulent inducement claims is further warranted, as there is documentary evidence establishing

---

[3] As will be described in more detail, infra, the documentary evidence shows that, some months earlier, Greene had, in fact, requested and subsequently received the return of his $6,000,000 investment in the Team (see Mitnick Aff., Exh. A-C).

that the alleged agreement, at the core of plaintiff's claims, never existed. Specifically, defendants note that, although the complaint alleges that Greene was induced to invest and raise funds for the Team by the various promises made about his future role in the organization, there is documentary evidence, i.e., a letter dated July 13, 2004, which establishes that Greene subsequently sought the return of his investment because the parties had been unable to reach any agreement on the terms of that participation (see Mitnick Aff., Exh. A). The July 13, 2004 letter, signed by Greene on behalf of EG Group, LLC, provides that:

> [i]nasmuch as we have not been able to reach agreement on the terms of my participation and the applicable Operating Agreement, at this time I would ask you to return [the remainder of] my deposit of $5,000,000, together with interest thereon from the date of the deposit (November 7, 2003).

(id.). Defendants additionally note that Greene has conceded, in the complaint, that he was "without an express written or oral agreement specifying the exact terms of Greene's compensation" (Compl., ¶ 68).

Defendants argue that dismissal of the promissory estoppel claim is further warranted, because plaintiff has not alleged an unconscionable injury sufficient to overcome the statute of frauds. They argue that dismissal of the fraudulent inducement claim is further warranted on the ground that it is no more than a breach of contract claim dressed up as a claim for fraud.

Finally, defendants argue that, to the extent that plaintiff seeks to recover the amount of his investment in the Team, dismissal of such claim is warranted, as all of plaintiff's investment was returned to him, with interest, by August of 2004. In support of their contention, defendants have produced copies of two wire transfer confirmations establishing that $1,000,000 was transferred to Greene on February 23, 2004 (see Mitnick Aff., Exh. B) and that, following

defendants' receipt of the July 13, 2004 letter, the remaining $5,000,000, plus interest, was returned on August 3, 2004 (id., Exh. C).

Although not alleged in the complaint, plaintiff has acknowledged, in his Memorandum of Law submitted in opposition to the motion, that the $6,000,000 investment was returned in 2004 (see Pl. Br., at 7-8), and that he now seeks only the value of what was promised to him for the work he performed on behalf of defendants (id., at 2). Greene argues that the return of the investment is irrelevant to these claims, as "there is no evidence to support that Greene's return on his investment is a forfeiture of remuneration due him for procuring investors" (id.).

In any event, plaintiff argues that dismissal of the complaint is not warranted, because the services that he rendered to defendants went beyond that of mere fund-raising, and thus were more extensive than the limited activities of an intermediary generally encompassed by GOL § 5-701 (a) (10). Additionally, he argues that, even if the Court should find that the statute of frauds is applicable to his services, the promises of remuneration allegedly contained in the Benefits Letter are sufficient to sustain the quantum meruit and money had and received claims, if not the two contract-based claims.

Plaintiff argues that dismissal of the cause of action for promissory estoppel is not warranted, as the issue of whether a loss of finder's fees constitutes an unconscionable injury is an issue of fact that should not be decided on a CPLR 3211 motion.

He argues that dismissal of the claim for fraudulent inducement is not warranted, as this claim is based upon the allegedly false representations defendants made to induce Greene to provide his services to solicit investors, and not upon any express agreement. Greene argues that, because the alleged representations were entirely independent of any contractual relations

between the parties, they are sufficient to sustain this cause of action.

DISCUSSION

On a motion to dismiss for failure to state a cause of action (CPLR 3211 [a] [7]), the Court must accept the facts alleged as true and accord the plaintiff the benefit of every favorable inference (see Leon v Martinez, 84 NY2d 83 [1994]). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration" (Skillgames, LLC v Brody, 1 AD3d 247, 250 [1st Dept 2003], citing Caniglia v Chicago Tribune-New York News Syndicate, Inc., 204 AD2d 233 [1st Dept 1994]. "When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). Dismissal pursuant to CPLR 3211 (a) (1) is warranted only where the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law (Leon v Martinez, 84 NY2d at 88).

General Obligations Law § 5-701, which codifies New York law regarding the statute of frauds, provides, in relevant part, that:

> (a) Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:
>
> ***
>
> (10) Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity . . .

(GOL § 5-701 [a] [10]). The statute defines "negotiating" to "include[] procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction" (id.). The provision expressly applies "to a contract implied in fact or in law to pay reasonable compensation" (id.).

Initially, plaintiff argues that the statute of frauds does not apply to his claimed activities because he was solicited by Ratner not only to use his connections and abilities to raise funds, but also to introduce Ratner to appropriate persons and communicate Ratner's intentions with regard to the Nets franchise. Plaintiff argues that, due to the range of services that he performed for defendants, his role transcended that of a mere intermediary "who perform[s] limited services in the consummation of certain kinds of commercial transactions" (Freedman v Chemical Constr. Corp., 43 NY2d 260, 266 [1977]), and thus takes his activities outside the statute of frauds (citing, inter alia, Super v Abdelazim, 108 AD2d 1040, 1041-42 [3d Dept 1985]; Streit v Bushnell, 424 F Supp 2d 633, 642 [SDNY 2006]; Riley v N.F.S. Servs., Inc., 891 F Supp 972, 977 [SDNY 1995]).

While the complaint alleges that Greene performed more than one service for defendants, all of the services that Greene allegedly performed involved either introducing parties to the transaction, or assisting Ratner in bringing about the consummation of that transaction. Courts have consistently held that "where . . . the intermediary's activity is so evidently that of providing 'know-how' or 'know-who', in bringing about between principals an enterprise of some complexity or an acquisition of a significant interest in an enterprise," the statute is applicable (Freedman, 43 NY2d at 267; Newman v Crazy Eddie, Inc., 119 AD2d 738 [2d Dept 1986]). As all of the services allegedly performed by Greene fall within the core meaning of "negotiating,"

as that term is defined in GOL § 5-701 (a) (10), the statute is applicable. Therefore, any agreement pertaining to those services must be evidenced by a writing to be enforceable.

To be sufficient to satisfy the statute of frauds, a writing evidencing a contract must contain all of the essential terms of the purported agreement, including the rate of compensation (see Nemelka v Questor Mgt. Co., LLC, 40 AD3d 505 [1st Dept 2007], lv denied 10 NY3d 705 [2008]; Signature Brokerage, Inc. v Group Health Inc., 5 AD3d 196 [1st Dept 2004]); V. Ponte and Sons, Inc. v American Fibers Intl., 222 AD2d 271 [1st Dept 1995]). However, it is not necessary that the contract be set forth in a single document, as "[s]igned and unsigned writings relating to the same transaction . . . may be read together to evidence a binding contract" (Weiner & Co. v Teitelbaum, 107 AD2d 583 [1st Dept 1985], citing Crabtree v Elizabeth Arden Sales Corp., 305 NY 48 [1953]).

While allegations that a series of letters and related memoranda comprise a complete and enforceable document may be sufficient, for pleading purposes, to sustain a contract cause of action (see Brylgrove Ltd. v Tompkins, PLC, 172 AD2d 452 [1st Dept 1991]), here, the complaint contains no such allegations. Nor has plaintiff identified anything in his evidentiary submissions, offered in further support of the pleadings, which might indicate that the Benefits Letter either separately, or in conjunction with the other agreements between Brooklyn Basketball and EG Group, comprises a complete and enforceable agreement with respect to Greene's service in procuring investors and/or in assisting in the acquisition of the Team. Indeed, in the implied contract cause of action, Greene essentially acknowledges the absence of such agreement, in alleging that he was entitled to recover the fair and reasonable value of his services "[e]ven without an express written or oral agreement specifying the exact terms of

Greene's compensation" (Compl., ¶ 68).

As the complaint "does not allege an express contract nor purport that an express contract was formed" with respect to his fund-raising and other services (Pl. Br., at 22), the first cause of action, for breach of implied contract, is dismissed.

The fifth cause of action, for breach of the covenant of good faith and fair dealing, is also dismissed, for lack of a valid and binding contract from which such duty would arise (Schorr v Guardian Life Ins. Co. of Am., 44 AD3d 319 [1st Dept 2007]; American-European Art Assoc., Inc. v Trend Galleries, Inc., 227 AD2d 170 [1st Dept 1996]).

Plaintiff argues that, even if the contract claims cannot be sustained by virtue of the statute of frauds, he should still be entitled to seek to recover the value of his services in the causes of action for quantum meruit and money had and received. Greene notes that, although the statute of frauds applies equally to contracts applied in law or in fact to pay reasonable compensation, the writing requirements to support a claim in quantum meruit are not as stringent as those to state a breach of contract claim. Thus, unlike a contract action, where a memorandum sufficient to meet the requirements of the statute of frauds must contain all the material terms of the agreement,

> [i]n an action in quantum meruit . . . for the reasonable value of . . . services, if it does not appear that there has been an agreement on the rate of compensation, a sufficient memorandum need only evidence the fact of plaintiff's employment by defendant to render the alleged services. The obligation of the defendant to pay reasonable compensation for the services is then implied

(Morris Cohon & Co. v Russell, 23 NY2d 569, 575-76 [1969]; see also Davis & Mamber, Ltd. v Adrienne Vittadini, Inc., 212 AD2d 424 [1st Dept 1995]).

Plaintiff contends that the Benefits Letter, the Subscription Agreement and a separate

escrow letter that were all executed on November 7, 2003, together comprise a memorandum sufficient to sustain such claim. Specifically, plaintiff argues that the Benefits Letter, by making reference to his "role" in the company rather than to his "investment," supports his allegations that the promised remuneration did not relate solely to that investment. He argues that the Benefits Letter was intended to memorialize the benefits to be provided to him in exchange for his "role," i.e., in providing and procuring investors, "to the exclusion of his capital investment," which, he now argues, was governed solely by the escrow letter (Pl. Br., at 17) . Plaintiff contends that the Benefits Letter, by "evinc[ing] the fact of plaintiff's employment by defendant to render the alleged services for his 'role' 'on behalf of' [d]efendants" (id.), is, thus, sufficient to sustain his quantum meruit claim. Additionally, he argues that, if the Court sustains his quantum meruit claim, his cause of action for money had and received also should be sustained, since defendants have sought dismissal of that claim on exactly the same grounds.

In Morris Cohon, the Court of Appeals held that the memorandum at issue was sufficient to sustain a quantum meruit claim, as the "writing relied upon by plaintiff identifie[d] the parties to the contract, the subject matter of the contract and establishe[d] that plaintiff in fact performed" (23 NY2d at 574). Following Morris Cohon, courts have permitted quantum meruit claims to proceed where there existed a writing that, at a minimum, identified the existence of an alleged agreement and its subject matter, or acknowledged performance of the alleged services (see e.g. Gottesman Co. v Keystone Enters., Inc., 43 AD3d 696 [1st Dept 2007]; Davis & Mamber, Ltd. v Adrienne Vittadini, Inc., 212 AD2d at 706; Kalfin v United States Olympic Comm., 209 AD2d 279 [1st Dept 1994]; Blye v Colonial Corp. of Am., 102 AD2d 297 [1st Dept 1984]; Shapiro v Dictaphone Corp., 66 AD2d 882, 884-85 [2d Dept 1978]).

Here, however, none of the writings referenced by plaintiff identify any of the services allegedly to be performed by Greene on defendants' behalf, or acknowledge plaintiff's performance thereof. Thus, as the writings fail to establish either the existence or subject matter of the alleged agreement, they are not sufficient to support the quantum meruit claim. Accordingly, this cause of action is dismissed.

As the cause of action for money had and received is based solely on defendants' alleged failure to compensate plaintiff, after receiving the benefits of his services, it too is precluded by the statute of frauds, and is dismissed.

The essential elements of a cause of action for promissory estoppel are a clear and unambiguous promise, and an injury sustained in reliance on that promise (see Plaza v Estate of Wisser, 211 AD2d 111 [1st Dept 1995]). Where the doctrine of promissory estoppel is invoked to preclude a party from asserting the statute of frauds, its use is reserved for that limited class of actions where the promisee, in reliance on the promise, has suffered unconscionable injury (see Melwani v Jain, 281 AD2d 276, 277 [1st Dept 2001]; see also American Bartenders School, Inc. v 105 Madison Co., 59 NY2d 716 [1983]), i.e, an "injury beyond that which flows naturally (expectation damages) from the non-performance of the unenforceable agreement" or promise (Merex A.G. v Fairchild Weston Sys., Inc., 29 F3d 821, 826 [2d Cir 1994], cert denied 513 US 1084 [1995]; Philo Smith & Co. v USLIFE Corp., 554 F2d 34, 36 [2d Cir 1977]).

Even assuming that defendants' promises of "remuneration" were sufficiently clear and unambiguous to sustain this cause of action, dismissal is warranted as the complaint does not allege unconscionable injury. Nor does the complaint allege conduct or circumstances so egregious, as to render the application of the statute of frauds unconscionable (Long Island Pen

Corp. v Shatsky Metal Stamping Co., Inc., 94 AD2d 788 [2d Dept 1983].

The essential elements of a cause of action for fraud in the inducement are "a representation of a material existing fact, falsity, scienter, deception and injury" (Channel Master Corp. v Aluminum Ltd. Sales, Inc., 4 NY2d 403, 407 [1958]). As plaintiff notes, "one who fraudulently misrepresents himself as intending to perform an agreement is subject to liability in tort whether the agreement is enforceable or not" (id. at 408). However, "[i]f the proof of a promise or contract, void under the statute of frauds, is essential to maintain the action, there may be no recovery" (id.).

In his fourth cause of action, Greene alleges that defendants' numerous false representations and promises were made

> with the sole and express purpose of inducing Greene to invest large sums of money on his own, and to solicit others to invest in the Team and Project and secure significant financial benefits for Ratner and others while excluding Greene from those very things which were expressly made conditions to his participation with Ratner in taking advantage of Greene's oft repeated desire to become part of the management of an NBA team

(Compl., ¶ 84). He further alleges that, in reliance on those promises, he "initially invested $6,000,000 of his own and by reason of sheer effort and persuasion used with others raised $31,000,000 for the benefit of the Defendants" (id., ¶ 85). Greene alleges that, "solely as a result of the foregoing, [he] has suffered extensive financial damage in an amount believed to exceed $5,000,000" (id., ¶ 86).

As noted previously, plaintiff has acknowledged that he does not now seek damages related to his investment, as his total investment was returned to him, with interest. Nor can plaintiff seek to recover, in this cause of action, the value of the services that he rendered to

defendants in reliance on their promises of remuneration, as such would require proof of promises that were void under the statute of frauds (see Wings Assoc., Inc. v Warnaco, Inc., 269 AD2d 183 [1st Dept], lv denied 95 NY2d 759 [2000] ["Since the alleged agreement is void by reason of the [s]tatute of [f]rauds, plaintiff cannot use the same alleged promise as a basis for a cause of action sounding in quantum meruit . . . or in tort" (citations omitted)]; see also Nelson Bagel Bakery Co., Inc. v Moshcorn Realty Corporation, 289 AD2d 69 [1st Dept 2001]. As the First Department stated in Intercontinental Planning, Ltd. v Daystrom, Inc., 30 AD2d 519, 519 [1st Dept 1968], affd 24 NY2d 372 [1969],

> [a]s it would be paradoxical to permit a business finder to recover, despite the absence of a writing, in quantum meruit, so too would it be incongruous and subversive of the legislative intent to permit a plaintiff in a finder's fee case to avoid the [s]tatute of [f]rauds by relabeling his claims a . . . "misrepresentation"

(id.).

As plaintiff has not particularized any other expenses or damages that were incurred in reliance on, but are not dependent upon proof of, the promises void under the statute of frauds, this cause of action is dismissed.

Accordingly, it is

ORDERED that the motion to dismiss is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: July 22, 2008

ENTER:

J.S.C.