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[*1] **Magnum Real Estate Services, Inc., Plaintiff-Respondent, v Associates, LLC, et al., Defendants-Appellants.**

5376, 107850/06

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

2009 NY Slip Op 1422; 59 A.D.3d 362; 874 N.Y.S.2d 434; 2009 N.Y. App. Div. LEXIS 1401

February 26, 2009, Decided

February 26, 2009, Entered

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: Sills Cummis & Gross P.C., New York (Mark E. Duckstein of counsel), for appellants.

Coritsidis & Lambros, PLLC, New York (Jeffrey A. Gangemi of counsel), for respondent.

JUDGES: Tom, J.P., Andrias, Nardelli, Buckley, De-Grasse, JJ.

OPINION

[**434] [**363] Order, Supreme Court, New York County (Helen E. Freedman, J.), entered May 8, 2008, which denied defendants' motion [**435] for partial summary judgment dismissing plaintiff's claim of ownership to certain real property, unanimously reversed, on the law, with costs, and the motion granted.

Plaintiff's claim of a 25% ownership interest in real property allegedly conveyed, not by or on behalf of a partnership that already existed between the parties, but by or on behalf of an entity created by defendants in which plaintiff had no interest, must be in writing or it is barred by the statute of frauds (*see Gora v Drizin, 300 AD2d 139, 752 N.Y.S.2d 297 [2002]; General Obligations Law § 5-703[3]*). Here, there is no evidence that such a writing existed, and none of the documents contained in the record establish that plaintiff is entitled to an ownership interest in either the properties or in the entity to which the properties were conveyed.

Furthermore, the record fails to establish the existence of a joint venture agreement such that plaintiff's claim is not subject to the statute of frauds (*see e.g. Walsh v Rechler, 151 AD2d 473, 542 N.Y.S.2d 262 [1998]*). There is no indication of mutual control over the management and operation of the properties, nor is there an agreement to share the burden of losses (*see Needel v Flaum, 248 AD2d 957, 958, 670 N.Y.S.2d 285 [1998]*).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 26, 2009